













# HISTORICAL REFLECTIONS

ON THE

## Constitution

AND

*REPRESENTATIVE SYSTEM*

OF

ENGLAND,

WITH REFERENCE TO THE POPULAR PROPOSITIONS

FOR A

Reform of Parliament.

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## INTRODUCTION.

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THE various attempts which have been made, from very different quarters, "to alter or reform the construction of the Commons' House of Parliament; cannot have failed to engage the attention of all reflecting persons who are in the habit of considering circumstances and occurrences of a public nature,

The grounds upon which most of the propositions for a change have been introduced, and often violently urged, appear to the author of the following pages so ill founded in many of the points assumed, and the error seems so dangerous in its consequences, that he is induced to attempt to undeceive the public in what he conceives to be mis-statement, at the least, and, per-



haps in many instances, culpable misrepresentation.

It has been well observed, that it is of importance to public happiness that the opinions of the people should not be misled upon points essential to the constitution. This is a wise and salutary maxim on all occasions, but it becomes peculiarly indispensable if at any time appeals are made to the people, and their intervention is attempted to be used in order to effect a change in the state.

Some persons, who conceive a radical reform in the representation to be necessary, have boldly assured the people that it is to be contended for as their right, and that the injustice of withholding it is the cause of heavy taxes and many other grievances, all of which would be remedied by a restitution of ancient privileges, which still continue their unalienable birth-right. They are told, that the genuine constitution of Parliament has degenerated, and that the measures proposed are no more than a restoration of its original principles and pu-



city ; that there is nothing of innovation in them ; and that they consist only in “ *a recurrence to those laws and that constitution, the departure from which has been the sole cause of that accumulation of evils which we now endure* \*.”

SOME years ago, the “ *restitution of the universal right of suffrage*” was distinctly insisted upon by persons of great weight, whether considered in their general characters, or in respect of the extensive popular influence their recommendation was calculated to produce : such assumptions, it is conceived, are not warrantable from the evidence of our histories, and are calculated to mislead the public mind upon a subject of deep and universal importance.

The author entertains as little doubt as any person of the existence of some great improprieties in our representation ; but he is prepared to deny, that for that reason, the whole structure of the system is to be over-

\* Sir F. Burdett's Speech in the House of Commons, 15th June 1809.



thrown; or because bribery and influence are still occasionally to be found unpunished in our elections by the evasion of the laws made against them, that therefore the people are to be told, it is necessary for them to “ exercise their inherent and undoubted right of reviewing the whole plan of delegation, and, by recurring to the first principles of our constitution, again to establish it upon its ancient foundation of equity and right reason.”

Although a considerable time has elapsed since these doctrines have been very notoriously promulgated, still they are carefully kept alive; and lately the House of Commons was divided by Sir F. Burdett upon a proposition of reform grounded on the same mistaken premises of reference to ancient

\* See Report of Sub-Committee of Westminster, May 1780; and Plan for taking the Suffrages of the People, &c. signed T. Brand Hollis; together with a resolution of thanks for the same in July 1780, signed C. J. Fox.—*H. yvill's Political Papers.*

The two addresses of the Yorkshire Committee to the electors of Great Britain, drawn up with the utmost art, participated cautiously in that view.—*Ibid.*



and supposed "rights of the constitution." Universal suffrage is the only point that is changed in the positions now maintained; and even that right, as it was called, is scarcely abandoned in substance, while a claim to the elective franchise is persisted in to the extent that was then avowed.

By thus displaying a wrong view of facts, and disseminating unfounded statements of rights, the people are taught to believe that they are deprived of privileges, and subjected to a worse government, and to more heavy grievances, than would otherwise be experienced. Under such delusive impressions, inculcated on the least informed and most numerous orders of men, the appeals that have been made to excite a popular feeling of animosity against the House of Commons and the Government, seem to merit the reprobation of all well-minded members of society, as misdoings of the most pernicious tendency, and of no common magnitude.

That there are defects in the present system of representation, will not generally be



denied ; but all considerate persons will probably agree, that a correct view of the causes, nature, and amount of the disorder is necessary in order to discover and suggest a suitable remedy. If the latent operation of time has occasioned changes in the habits, the prejudices, and the conduct of men ; if the materials, as it were, of which society has been formed, have undergone an alteration ; if there be in fact dilapidations in the structure of the House of Commons, arising from such changes or any other cause ; and if reparation with practical improvement, not wild theoretic change, be intended ;—in proportion as we may be impressed with the affirmative of these propositions, so much, it is conceived, will the necessity appear of a temperate and correct view of the facts belonging to, and connected with a subject thus highly important. and perhaps equally difficult.

It has long been a prevailing fashion to extol the wisdom of our ancestors ; and certain views of “ the founders of our constitution ” are sometimes referred to as differing much from the situation in which the country is



now placed; but these expressions, although occasionally used by writers of received authority, are yet liable to be misapplied and misunderstood: it should be remembered, that while we praise some of the old institutions, there are a much greater proportion of them that neither are nor could be suited to the present circumstances of society.

About half a century ago a very able historian wrote thus :

‘ Those who, from a pretended respect to antiquity, appeal at every turn to an original plan of the constitution, only cover their turbulent spirit and their private ambition under the appearance of venerable forms; and whatever period they pitch on for their model, they may still be carried back to a more ancient period, where they will find the measures of power entirely different, and where every circumstance, by reason of the greater barbarity of the times, will appear still less worthy of imitation. Above all, a civilized nation like the English, who have happily established the most perfect and most accurate system of liberty



that ever was found compatible with government, ought to be cautious of appealing to the practice of their ancestors, or regarding the maxims of uncultivated ages as certain rules for their present conduct. An acquaintance with the history of the ancient periods of their government is chiefly *useful*, by instructing them to cherish their present constitution from a comparison or contrast with the condition of those distant times. And it is also *curious*, by showing them the remote, and, commonly, faint and disfigured originals of the most finished and most noble institutions, and by instructing them in the great mixture of accident, which commonly concurs with a small ingredient of wisdom and foresight, in erecting the complicated fabric of the most perfect government\*."

To examine the various detached allegations set forth in the shape of arguments in favour of the reform contended for, would lead only to an ill-connected series of political and historical contradictions, without establishing any practical conclusion on the

\* Hume's History—Reign of Richard III.



general imputation of political degeneracy and injustice objected against the present age; it is therefore considered expedient to present a concise view of the political condition of the kingdom from a period sufficiently early to embrace all circumstances materially connected with the present constitution; and by occasional comparisons of the references now affected to be made, whatever difference is found, will be the more readily estimated.

In the investigation which will be requisite to delineate the successive stages of our national polity, the rise and establishment of our present legislature, and the corresponding situation of the people in regard to liberty or restraint, comfort or depression, it will perhaps frequently be unavoidable to mention very unpopular facts, offensive and derogatory to the majesty of the people, and unwelcome to the present suitors in that court. Many circumstances will likewise occur in the narrative, concerning which the author thinks it necessary to premise, that they are merely related historically, without reference to right or



wrong, and therefore not to be connected with any supposed opinions in their favour.'

It remains now to anticipate, what will probably soon occur to the learned reader as requisite, namely, an acknowledgment of the incompetency of the author's means for a suitable discussion of the extensive subject; without considering such an admission a sufficient excuse for obtruding a very imperfect performance on the public, the apology being felt to be necessary, is candidly submitted.

A comprehensive constitutional history of unquestionable authority seems to be a desideratum in our national literature: if the slight manner in which the present sketch is executed should have the effect of calling the attention of competent talents and learning to the subject, or of inducing individual reference to the histories and authorities, where a comparison of the general condition of the people in the various preceding ages of our constitution with their present situation can be truly made, the objects of the author will be in some measure attained.



And, if by the observations here suggested, persons who inconsiderately suffer themselves to be drawn into the vortex of popular dissatisfaction shall be induced to examine facts and real causes, rather than continue to cherish every assertion urged in any shape of grievance or complaint as an argument for constitutional discontent, and re-form of Parliament, he is confident they will find reason for abstaining to contribute to the popular delusion, which is in many cases equally unthinkingly propagated and embraced.







# HISTORICAL REFLECTIONS,

*&c.*

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THERE seems no useful point of view, as to the purposes of this discussion, in which it can be requisite to refer either to the political situation of the people, or to the structure of the monarchy, at an earlier period than that which follows the Conquest. Allusions are often made to the German or Saxon origin of our government, and to the influence which the principles of the old institutions of these invaders have had on our primitive establishments; but the accounts of their times are involved in so great uncertainty, that it would be impracticable to obtain any well-connected idea of the progressive state of the government, upon such doubtful and disjointed premises as our old historians afford. For a considerable space of time, even after the reign of King John, the records and authentic accounts of public transactions are so extremely



deficient in circumstances, connexion, and manner of expression, that it is no easy task to form a tolerably just and comprehensive view of the political condition of society, unless from a few strong leading facts, which happen to be incontestable. From such circumstances, so far as they go, the situation of the people and the country may be inferred generally upon pretty safe grounds, because the degree of authority and power exercised by the crown and the superior orders of the state being ascertained, the condition of the people, as to liberty or restriction, cannot be much mistaken.

It appears manifestly, that whatever might be the political arrangement of society previous to the Conquest, it was then established on a certain foundation, in a great measure new. The main bearings of that fundamental system are sufficiently known to indicate the relative situation of the several great divisions of the community, whose interests and habits were uncontrollably affected by it; I allude to the feudal constitution, which was so effectually implanted here by William the Conqueror, that some of its remains, both in principle and practice, continue at this day, in our maxims of government and the tenures of our lands. The influence of such a system, universally diffused through a,



ciety, was so important, and continued in a greater or less degree for so long a period, that a knowledge and recollection of its principal regulations become indispensable towards forming a right view of this subject.

That the histories of those times should impart so little connected information on the civil concerns of the country, is to be regretted, in regard to general historical curiosity, and more particularly on such occasions as the present, where a correct comparative estimate of the constitution would be so useful and instructive. It is, however, in vain to search for a defined and acknowledged statement of our early constitution, unless nearly in so far as is to be collected from the feudal system. The tendency or effects of political institutions were not, then objects of general concern, the temper and views of men were otherwise directed than to the speculations which now occupy so much of their attention. Martial enterprise was the fashion, and peculiar characteristic of the age, and civil liberty, or perfect political arrangements, were not the subjects of men's reflections.

It is lamentable to observe the state and effects of education in those times; such as it was, it served only to benumb the faculties, and dete-



riorate the condition of man, by the excessive bigotry with which it was practised, and the shameful purposes in which its usurped powers were employed. The faint shadow of intellectual improvement arising from the knowledge of the few manuscripts then existing, was entirely confined to the clergy; they engrossed, besides, both the little learning and practice of the law that was then used, and were also very generally at the head of the administration of the state. Hence, all our early historians are of that order; and, according to the genius or talents of the reigning prince and his chief advisers, the principal transactions recorded are found to be the struggles between the civil and ecclesiastical authorities, mixed with the military operations of the respective reigns. The great points connected with general liberty are but little noticed, and no precise account is to be found of the manner or even authority for enacting laws; some general maxims are indeed mentioned; but the sanctions essential in legislation are but loosely defined, and what we know of the practice, corresponds so little with them, that it may well be doubted, whether, for many generations after the Conquest, there was any law of paramount effect to the will of the prince, when (as it often happened) he was disposed to pursue it.



It was my original intention to have stated the proofs, or rather the arguments which have been brought forward, to show the alleged immemorial existence of a representation of the people in the legislature, or, as Lord Lyttelton expresses, the presence of the people in the Great Councils of the Saxons, from thence said to have been continued after the Conquest in Parliaments, nearly as now understood, down to the present age; and then to have added the matters that have been urged to establish a different position—namely, that no representation can be proved, or is likely to have existed, prior to the reign of Henry III.

But before I had proceeded far in this investigation, two circumstances presented themselves, which have induced me to dwell but shortly on the period preceding that reign. The first is the well-known clause in King John's Charter, usually called *Magna Carta*, which, although it does not express where the supreme general legislative power was vested, yet must be admitted to describe sufficiently the parties then held necessary to compose the *Commune Concilium*, which, together with the King, was acknowledged to possess the power of imposing taxes.



The other reason for shortening this preliminary discussion, arises from the consideration, that it incontrovertibly appears from the uniform tenour of the histories previous to Henry III. or even Edward I. that whatever may be supposed as to the existence of representation, there was evidently no power or influence in the kingdom, possessing any means of securing the subject against oppressions, that can be contended for as now lost, and as worthy of being added to our present system, in order to improve the condition of the people. This remark might indeed apply much further down in our history; but in times when a representative body really existed, such an argument should more particularly be shown to arise from the facts of the respective periods to be considered.

Those who contend for the existence of Parliaments as now constituted, before the times of Henry III. or Edward I. are reduced, by the absence of direct proofs, to reasoning from analogy, and on various detached circumstances, collected, and, as it were, pasted together (as has been said), in order to exhibit the appearance of what they fancy to have existed. But the inferential conclusions which alone can be obtained from such grounds; require, in order to be admitted, the corroboration of many col-



lateral circumstances; there should be found a tolerably manifest appearance of probability and fitness for such a privilege, from the general condition and habits of the people, with other concurring, although indirect evidence, which, together with a proved loss of records, might be reasonably offered in the room of direct proof. This assistance, however, is wanting. Some loss of records may indeed be alleged; but in most of the other points there will be found a material failing, and the general circumstances of that class of people whose representation I more particularly allude to, namely, the inhabitants of towns, make strongly against the position.

It must be admitted that the unsettled state of the language occasions frequent perplexity in the accounts of our early transactions; the ill-understood and obscure manner of writing history, and the many omissions and defective statements of important points, together with the paucity of authentic documents, occasion many deficiencies that cannot well be supplied. Learned and laborious compilations have indeed been made as glossaries and guides to the perusal of the elder historians, and explanatory of the terms used in those ages; but many of our late political secretaries, who contend upon the subject of early re-



presentation, have disregarded these approved interpretations, and, with infinite subtlety and zeal, have perplexed the points they endeavoured to elucidate and establish †

It seems, however, impossible for an unprejudiced person who has investigated the subject, to dissent from the remark of a learned annotator on our early legislation †, who in touching on this matter says, “No one can read the old historians and chronicles, who will observe any strong allusion or trace of it” (representation before the time of Henry III.), “if he does not sit down to the perusal with an intention of proving that they” (the Commons) “formed a component part.” It happens, nevertheless, that several authors of considerable reputation and authority have used great endeavours to prove this early representation; and some of them having been peculiarly conversant with our best repositories of ancient information, their opinions may, by many, be held to be founded on conviction after sufficient investigation, and therefore entitled to great weight. And although the reasonings and

\* Particularly the Bibl. Pol. of Mr. Tyrrell, and Lord Lyttelton's History of Henry II.

† The Hon. D. Barrington's Observations on the Ancient Statutes.



proofs adduced, have been so ably controverted by other authors, that the point seems now pretty well agreed to be taken, nearly where the records do distinctly show it; I shall, notwithstanding, in the course of these reflections, add a few general observations on that point, conceiving it to be materially connected with my subject.

Upon a view of the general circumstances of the country from the Conquest to the reign of Henry III. it will appear almost impossible that any thing like what is now understood by popular representation, could have existed. The retrospect of that period will also bring to our recollection many circumstances necessary to elucidate the subsequent occurrences in the early history of our legislature; without which, much of what will appear of its rise, its progress, its changes, and its improvements, and many of the incongruous occurrences that will be found, might seem too improbable for belief. Without keeping in view some seemingly contradictory tendencies in the feudal system, which cherished boldness while they enforced submission, and, in general, familiarized the people to an aristocratical superiority, irregularly and arbitrarily exercised; it would be difficult to account for the various instances of sudden encroachment on the original power of the Crown, and the abrupt relinquish-



ment of the pretensions, that occur during several ages of our early parliamentary history. It will, therefore, be both useful and necessary to keep in mind the state of the country, and the general condition of its inhabitants, immediately preceding the dawn of those improvements, which, from a situation very nearly approaching that of slavery, have, by slow, and often imperceptible degrees, brought this kingdom to its present enviable state of political establishment.

Notwithstanding all that has been urged against the propriety of the ill-relished addition of Conqueror, usually given to William I. it is certainly consistent with the best authorities to say, that he reigned completely as such. However reluctantly the spirit of the present age may admit that the issue of the single battle of Hastings decided the fate of England, yet it is incontrovertible, that after that event, there was no power left which could control the will of the victor; and that in less than the short period of his reign he altered the whole property of the kingdom, overturned all jurisdictions unsuited to his views, and modeled every establishment to the purpose of arbitrary government.



Sir W. Blackstone says, “ The ultimate property of all lands, and a considerable share of the present profits, were vested in the King, or by him granted to his Norman favourites, who, by a gradual progression of slavery, were absolute vassals to the Crown, and as absolute tyrants to the community.” As to legislative polity, he says, the Conquest “ wrought as great an alteration in our laws, as it did in our ancient line of Kings.” Any detail of the reversing and humiliating changes, then universally enforced, is unnecessary, as the accounts of our later writers, of settled authority and consideration, have put the general condition of the kingdom sufficiently in view. The author above quoted, after enumerating the principal innovations, says in conclusion, “ The nation at this period seems to have groaned under as absolute a slavery as was in the power of a warlike, ambitious, and a politic Prince to create.”

On this subject, a very acute modern historian \*, less confined in his view of the Conquest than the learned Judge, states, that “ scarce any of those revolutions, which, both in history and in common language, have always been de-



nominated conquests, appear equally violent, or have been attended with so sudden an alteration both of power and property;" adding, that it were difficult to find in all history, a revolution attended with more complete subjection of the ancient inhabitants, who, groaning under contumely and oppression, were reduced so low in poverty, and even meanness, that the English name became a term of reproach. It would indeed be consolatory to find that the colouring of such a picture of distress were somewhat overcharged; but these representations are completely supported by the accounts of our more ancient historians.

The feudal system, which prevailed in Europe at the period of the Conquest, was not unknown in England before that time. No political arrangement could be better contrived than it was, for the support of aristocratical power in the nobles, and a paramount arbitrary control in the Crown. It was, besides, peculiarly calculated for the circumstances in which William found himself in every respect. He had a numerous host of adventurers to provide for, and by investing them with the possessions of the English, under the feudal obligations, he at once rewarded his followers, and effectually supported himself in



the high estate of feudal sovereign of the kingdom.

Mr. Hume, in delineating the feudal system, represents it as a "prodigious fabric, which, for several centuries, preserved such a mixture of liberty and oppression, order and anarchy, stability and revolution, as was never experienced in any other age, or any other part of the world."

The effects of the system in England were sufficiently of this description; and it was owing in a great degree to mismanagement of its means, that its permanency was not better proved. Had the successors to the Crown, and their advisers, been careful to prevent any very great accumulations of property from falling into the hands of individual nobles, which it was particularly in their power to do, the great men of the kingdom had been kept in due subordination; and had it been the lot of our Princes to have been less connected with the Continent, many of their demands of extraordinary aids and services from their subjects had not been occasioned; that extraneous cause, together with the immense alienations of the demesnes of the Crown, were highly instrumental in producing and extending the popular encroachments on the feudal constitution, which might otherwise have been much retarded;



and an age of degradation to the most numerous and most useful part of the community, had been also unfortunately prolonged.

Since the first general feudal age in England, the fundamental principle which indicates the relative condition of the governors and the governed, with respect to the source and purposes of their respective functions, has been diametrically reversed from the position which it then occupied.

The Conqueror, in enforcing universally the feudal institutions, shaped every thing for the support of his sovereign independent pre-eminence; and he did not fail to appropriate ample means for the permanent support of the Crown and government upon any internal emergency. The extensive authority vested in the monarch, was a natural consequence of the important obligations, under which the lands of the kingdom were by him granted, and by all ranks of subjects accepted. From a similar principle likewise, and equally contrary to the present order of things, the Crown was, in financial respects, by its own acts, rendered securely independent of the people. But the fallibility of human prudence seems not to have admitted that it should be foreseen, what



the services unprovided for, occasioned by our subsequent ambitious connexions with the Continent, were to produce; neither were the restraints against alienating the possessions of the Crown, found sufficient to prevent the senseless prodigality of many of the Princes who succeeded to it. It is, however, unnecessary for the present to enlarge on this part of the subject, and we will resume the view of the condition of the kingdom in its political circumstances, from the Conquest to the end of the reign of Henry III.

The whole landed property of the country was disposed of under tenures from the Prince \*; the soccage lands, comparatively small in quantity and value, a remnant of what was before called allodial property, forming no very material exceptions to that general position. The few persons who were permitted accidentally (as seems most probable) to retain them, very soon found their situation so precarious, and every way so

\* "Though William I. and other feudal sovereigns, made large grants of lands to their nobility, clergy, and other vassals, they did not relinquish all connexion and interest in these lands. On the contrary, they, in fact, granted only the right of using them on certain conditions, still retaining the property, or *dominium directum* in themselves, &c."

*Henry's Hist.*, vol. vi. p. 15.—*Hume*, App. II.



much worse than that of those who held under military or other obligations, that they gradually surrendered such possessions to the King, or some potent neighbouring baron, receiving them back to be held under the feudal stipulations\*. Neither did the lands retained by the Crown in demesne, or those granted under the more honourable service of grand serjeanty, make any exception to that universal policy through which all the real property of the kingdom was distinctly subjected, in some necessary service or tribute to the monarch; the tenants of the former description of land, although they might be objects of

\* Lord Lyttelton's History of Henry II. vol. iii. p. 128. Hume, Appendix II.

"Those who had been neuter" (in the struggles with the Conqueror) "were employed in the drudgery of farming, or cultivating their own estates, for the benefit, and at the will of their lords. In this situation, they found themselves so much oppressed, as to represent, that if they were not relieved, they must, as others had done, leave their country, and go and seek subsistence elsewhere. Upon this it was declared, that whatever conditions they could, by their submission and service, obtain from their lords, they should safely and securely enjoy."—*Dial. de Scaccar. apud Campbell, Pel. Sin.* "By the end of the reign of Henry II. (1189), or before, the feudal law was so fully settled, that all the lands in England were charged with some service or other."—*Madox, apud Stuart, Historical Dissertation on the Antiquity of the English Constitution.*



occasional favour from a generous master, were, according to received usage, liable to very heavy talliages or taxes: the more fortunate holders under the latter tenure had expensive but honourable duties to perform, essential to the circumstances and splendour of the monarchy, of which it was one of the soundest general principles, that there should be no dignity nor honourable office without substantial means annexed, to ensure and support the suitable performance of its duties. The immense possessions held by and under the Church, were likewise, by the Conqueror, subjected to the general obligations for the support of the Crown and government. Thus, soon after the Conquest, all the land was constitutionally tributary to the King, not by any concession from the holders, nor by any other act on their part, than that of accepting those lands that were bestowed upon them under such conditions, and with penalties of forfeiture for non-performance. We shall very soon see that the tributes and prestations so imposed were amply adequate to all the internal exigencies of the Crown.

The territorial division of the kingdom is very particularly handed down to us; the demesnes reserved for the Crown consisted of 1422 manors and lordships, besides detached possessions, and some share of the four northern counties, of



which the accounts have not been so well preserved. These immense manors and lordships are stated to have produced all sorts of provisions in kind for the household, and the overplus was taken in money. The Crown also possessed originally all the towns and ports, but they were occasionally granted to different barons. The direct pecuniary sources consisted of a *Hidage* or land-tax, sometimes called *Danegelt*, and a quit-rent. Of a different description were the profits of wardships, marriages of heirs, reliefs, and fines: these last were more extensive in their nature than might at first appear: they arose on the livery of hereditary lands, assignation of dower, licenses of marriage, and leave to sue in the King's court; besides which, there were many penal fines or amercements, then very considerable, as by far the greater number of offences were punished by fines and forfeitures; very few of these being fixed, the amounts were mostly discretionary in the crown and its officers. There were besides a vast list of tolls and customs for passage and pontage, markets, protections for travelling and trading, besides duties on merchandise, and leave to quit or enter the different ports; there were also a great number of oblata or free gifts. Added to these, there were in the hands of the Crown under the best of the Norman race of Princes,



very great revenues from escheated estates, and ecclesiastical benefices of the most lucrative and highest order \*. It may be imagined foreign to my purpose to mention the particular sources of the royal revenue ; but I do it because only a small proportion is in the way of general or equal assessment, and the greater part was by impositions of a discretionary and arbitrary amount ; and it will appear that a revenue so arising was productive of infinite oppression to the subject, while it established and strengthened an undefined and dangerous prerogative, by which a large proportion of it was raised.

The amount of the Conqueror's revenue does not appear to have been ascertained upon the best authority that might be wished ; it is, however, admitted by all our historians, to have been much larger in every point of view than any other Prince of this country ever possessed ; that it should have gradually diminished is not surprising, when the variableness of the succession, and the conduct of many who obtained the Crown are considered. It continued, however, long amply sufficient for all its proper purposes on an extensive scale, and nothing but boundless prodigality and ambition rendered it necessary to devise the



various means that were subsequently resorted to for supplying the defalcations that arose in it.

This revenue is supposed to have amounted to 1061*l.* 10*s.* 1½*d.* every day. Writers of good authority have differed as to the computation most suitable to ascertain the present value of the money of that time; and it is difficult to come to any unobjectionable conclusion on the point. Mr. Hume considers that revenue equal to between nine or ten millions annually; and Mr. Carte's calculation carries it to above eleven millions. On the other hand, Dr. Brady, Lord Lyttelton, and Dr. Henry, estimated its value at a much lower sum. Brady, who wrote about the year 1685, thought it not over-rated at upwards of five millions eight hundred thousand pounds. Lord Lyttelton, who wrote more than half a century later, brought it only to about five millions three hundred and seventy thousand pounds. Dr. Henry, about thirty years ago, supposed it worth nearly the same amount that Brady calculated. The two first-mentioned authors, who calculated the depreciation of money at the highest rate, had the computations of Brady and Lyttelton before them, so that, upon the whole, it is impossible to reconcile their different opinions. Later attempts have been made to assimilate the effective value of modern money to that of former ages,



but no conclusive estimate is likely to be found that will be every way satisfactory\*. My object, however, does not require that I should enter farther into this subject, than to ascertain upon what footing the financial circumstances of the monarchy were fixed after the Conquest.

There was no expenditure that can be discovered or fairly conceived in that age, to which this immense revenue was not adequate, without the aid of any new tax. It is indeed related, that William plundered monasteries and committed many acts of a savage conqueror, from whence much money and valuables were gathered into his treasury, but it has not been alleged that such measures were occasioned by the want of suffi-

\* According to Sir George Shuckburgh's system for calculating the depreciation of money, a revenue of 1000 l. 10s. 1½d. per day at the Conquest may be estimated at about eighteen millions of the money of the year 1600.

The vast sums of money mentioned in many parts of our early history seem so extraordinary, that they have been variously questioned. Voltaire, in noticing the sum stated to have been paid as the portion of the daughter of Henry I. of England, when married to the Emperor Henry V. and also the ransom of Richard I. doubts the correctness of them upon a comparison with similar circumstances in Germany at the same periods. But the property in the possession of some individuals of England in those times is scarcely credible, and yet the accounts concerning it have all the appearances of authenticity.



cient settled receipts; on the contrary, they are ascribed to an avaricious and rapacious natural disposition, irritated and favoured in its propensities by the resistance made to his reiterated oppressions.

The army collected for his expedition into this country was, undoubtedly in a great measure, though probably not entirely, rewarded by grants of lands to the chiefs, and the subinfeudations which are known to have been made by them to their respective followers; and although the Conqueror strictly required his military tenants to be constantly ready for service, yet he kept a standing army in pay \*. But as the government became more settled, the force of this description would be proportionally reduced; and he left a regular establishment of 60,215 fighting men, always ready armed, and liable by their tenures to serve forty days at their own charges when called forth.

The navy, such as it might be, was attended with some expense, but it is not to be supposed considerable. Ships were ordered for the purposes of war as often as such service was required; probably without any pay or regular compensation. Certain privileges and immunities appear to have been conferred on the ports in return: but



perhaps no very great expense to the Crown was incurred on account of transport or navy service, until the enthusiasm for the holy wars, that folly and scourge of Europe, and the increased connexion of our princes with continental dominions, made the greater employment of ships\* a necessary public measure.

Of the expenses of the civil government, there are no grounds upon which any thing like an estimate can be formed; but it may be assumed, that the direct money expense in salaries was not very considerable. Peculiar emoluments and possessions were attached to some offices; while the immense feudal prerogatives of wardship and escheats, together with numerous confiscations, afforded ample means to the Crown for rewarding its officers and favourites, for occasional and extraordinary services. There was an universal practice of paying for every public act or proceeding, whether judicial, or municipal in common

\* The Cinque Ports had early privileges, in consideration of furnishing ships for the public service. Henry II. or John, appears to have been the first King who kept any vessels as his own, and those mostly gallies with oars. In the time of Edward II. we find the King claimed a right to the services of all the merchant-ships, which were to be constantly ready for his service.—*M<sup>r</sup> Phetson's Hist of Commerce*. Lord Lyttelton says that other ports and inland towns had privileges under similar obligations.



right, both in the high and the subordinate departments of the state: even the acts of the sovereign, whether of right, grace, or favour, were all sold and paid for, not under any veil, as for undue proceedings, but as circumstances of course.

The household of such a Prince as William would be composed chiefly, if not entirely, of military characters, not perhaps altogether rewarded by direct stipends from the treasury of the King; and the class of persons employed in the execution of the law and distribution of justice, were, in a great measure, paid by the shameful practice of taking money, as just mentioned, from every one who had any business before them\*; a custom which seems to have arisen in the avarice and rapacity of the Normans, and having taken deep root, was not entirely eradicated for many ages. The principal expenditure of the Crown in those times was probably the household maintenance of an immense number of persons of all descriptions who constantly followed the King, or, according to the usage of the age, had occasion to visit the court, and particularly at the three grand festivals of Christmas, Easter, and Whitsuntide, when the high estate of the feudal monarch was displayed in its utmost splendour



and most impressive formalities : upon these great occasions the expense was enormous.

Many of our early kings made considerable monastic establishments, whereby their revenues were occasionally affected. But it is unquestionably certain, that upon the whole, the Conqueror enjoyed, and left, a revenue fixed and inherent in the Crown, independent as to grant from any description of his subjects, in all respects adequate to the most honourable support of every part of an extensive establishment.

The independence or dependence of the executive power upon the people as to finance, forms one of the most important points in all governments, and it has been most peculiarly important to the constitution of these kingdoms ; for by an attentive consideration of our history during the Norman dynasty, and the period immediately following, it may be clearly seen, how much the pecuniary necessities to which the Crown became by degrees reduced, have contributed to the origin and establishment of our representative body.

Another circumstance essentially affecting the state of a government, is the military establishment. Upon this head the feudal institutions of William were equally independent and decisive ; it



has been already stated, that the effective military force was fixed at 60,215 fighting men ; this was an army which there was no trouble or risk of recruiting, and the service was always forthcoming from the holders of the land, under penalties that effectually secured it. When the land fell to a minor or a woman, it was held by the Crown, or a responsible intermediate lord, in order to secure the due performance of this essential public duty. Sixty thousand was the number of the Conqueror's invading army \* ; in planning the scheme of his daring enterprise, he had fixed the force at that extent, deeming it sufficient to overcome any army likely to be opposed to him, and he was probably influenced by a confirmed opinion on that point, in adjusting at a similar number the tenures or knight's fees to which such military service was attached. Although he found a very great proportion of the land held by the Church, he determined to subject that also to military service, as without it, he probably could not have carried his force to the desired extent, and it might have been dangerous to have left so large a portion of land and land-owners on a footing at once so different from the rest, and so unsuited to his purposes. In the usual course of warfare in those times, any internal contest was likely to



be decided within the period of forty days to which the service extended ; and foreign conquests do not appear to have been in view when this order of the feudal military establishment was adopted.

An important part of the picture of the government remains to be noticed, namely, the situation of the supreme legislative power. After the Conquest, it is unquestionable that the country and its concerns, generally speaking, were completely in the power of William ; but whether he and his immediate successors could of their own authority bind their subjects by their edicts, has been both doubted and denied. This matter, looking to all its circumstances, is not easily decided ; as neither the extent of the prerogative, nor the constitutional position of the legislative authority, can in a strict sense be fully or satisfactorily ascertained. The main course of historical authorities shows that such power was acknowledged to exist in the King and the *Magnum* or *Commune Concilium* generally ; but after a very full consideration of the events of those times, I mean particularly from the Conquest to the reign of the third Henry at least, there appears every reason to conclude that the Crown possessed in itself a power of legislating by its edicts, in most, if not in all cases. Our ancestors of those ages seem, indeed,



to have felt less affected by personal restraint than by pecuniary exactions; and the feudal institutions appear to have familiarized people to an unusual degree of habitual submission to superiors; while the various pecuniary aids and other prestations imposed by their tenures might well entitle them to expect to be free from other contributions.

In order to explain more particularly the grounds for this opinion concerning the Legislature, it will be requisite to investigate the principal and best ascertained events resulting from the exercise of the supreme power, as they occurred in the period immediately preceding the first appearance of the regular system of legislation which now happily prevails.

The space of time from the Conquest to the accession of Edward I. may have been occupied by more than five generations, during which there certainly appears no probability of the existence of any representative principle as now understood in such assemblies as were convened, and it will be seen how far the legislative acts, and other circumstances that will be cited, are reconcilable to the exercise of an independent deliberative power, even in the barons.

During the reign of William the *Commune Concilium* never appears but at the fixed court festivals



of Easter, Whitsuntide, and, Christmas \*, when it is said to be held “ *ex more.*” If any national concern was *discussed* in that general assembly, it was on these occasions; there is, however, hardly any account of the proceedings in them, unless sometimes on ecclesiastical affairs; and although all formal acts then promulgated were said to be by the advice or consent of the archbishops, bishops, &c. and barons, there is no instance of dissent, or even of debate, upon any measure intended by the King; discussion might indeed be permitted on matters purely concerning the Church, and in which the Crown might be indifferent; but there is no reason to think that the will or desire of the King was ever counteracted.

There were three great national alterations made in this reign; namely, the subjecting of the lands of the clergy to military tenures; the forest-laws; and the separating of the old civil and ecclesiastical jurisdictions exercised by the county-courts: these were pointed acts of legislation, effecting important changes, both to future generations, and to subjects then existing; yet in none of them does there truly appear any trace of deliberate legislative sanction in a general national as-

\* Cottoni Posthuma. Gurdon on Parliaments.



sembly. That some of these momentous regulations were promulgated at the councils of the state-festivals seems clear; but there is only a slight pretence suggested (as far as the author has observed) of the concurrence of a council having been obtained, or even of the matter being transacted there, otherwise than announced as an edict of the King, usually, perhaps, first produced in such assemblies.

The subjecting of the church-lands to the feudal military prestations, is stated by Mr. Tyrrell and Lord Lyttelton to have been done by the assent of the great Council, and the authority of the whole Legislature. The former barely insinuates this on the opinion of Mr. Selden\*; but the latter, referring also to that opinion, attempts farther to prove it on the authority of the charter of Henry I. Mr. Selden's opinion, in this case, is certainly not worth referring to, nor was it worthy of him to give it on the grounds he mentions; for all he says on the subject is, after an obscure reference to an old writer, that as the "King held

\* Tyrrell's History (Reign of William I.), p. 25. Lyttelton, vol. i. p. 60. These two authorities are selected, as the writers were most zealous advocates for ancient popular rights. Selden's Titles of Honour, p. 578.—The author has not seen his notes on Eadmerus.



a Parliament the same year \*, so *perhaps* this innovation of their tenures was done by an act of that Parliament." Lord Lyttelton farther argues, that the measure had the consent of "the whole Legislature," upon grounds which it is difficult to apply to the case, and still less are they conclusive in it †.

The improbability of the measure having been submitted to any national council is still farther

\* The Conqueror kept the state-festivals regularly, when in England, as has been stated; and it is probable that at each, there was a Commune or Magnum Concilium held, *pro forma* at least, if not for business.

† The plain facts are, the Conqueror granted a charter apparently to restore the laws of the Confessor with emendations, which are stated to have been made "*assensu baronum suorum*." He *afterwards* ‡ imposes military service on churchlands; then one of his successors grants a charter, wherein, after several provisions for the remedy of abuses, there is this clause: "*Lagam Edwardi regis vobis reddo, cum illis emendationibus quibus pater meus eam emendavit concilio baronum suorum*." This is stated to be granted "*communi concilio baronum totius regni Angliæ*." If the provisions in question for subjecting the lands of the clergy to the feudal military services were part of the code thus granted by the Conqueror, they might perhaps be argued upon as having received the consent of the barons, but they are not to be found there. No proof, therefore, can be drawn from thence that the measure was not the act of the King's absolute power, or that it was done with the advice and consent of his Parliament.

‡ Tyrrell.



evinced by the manner in which another author of great credit notices the circumstance; he happens to be one of those who embraced a kind of party opinion with respect to the dominion acquired here by the first William, namely, that it was not the dominion of a *conqueror*. He follows also the notion adopted by almost all the writers of his profession, not only of a system of parliamentary legislation long before the time of Edward I. but of a state of freedom and regular government having existed before the Conquest, of which the efforts of the ages since that time have effected a gradual *restoration*. I allude to Sir William Blackstone, who, in his chapter on the feudal system, has hazarded a different conjecture; and if he had (as is probable) the authors just mentioned before him, it is to be presumed he did not agree in the likelihood of their suggestions. This writer supposes \*, that when, in the nineteenth year of William's reign, an invasion by the Danes was threatened, while the military system of the Saxons was laid aside, and no other introduced in its stead, the King was obliged to bring over a large foreign army; and that this apparent weakness, together with the grievance of quartering the troops, co-operated with the King's *remonstrances* to *incline* the nobility to



*listen to his proposals* for putting the kingdom in a posture of defence. It is before stated, that the King had *recommended* the feudal policy to the English; that when the danger was over, he held a great council, anno 1085, to inquire into the state of the nation, of which the immediate consequence was the national survey called Domesday-Book, which was finished the next year; and that towards the end of that year the King was attended by all his nobility, at Sarum, “where all the principal landholders submitted their lands to the yoke of military tenure, became the King’s vassals, and did homage and fealty to his power.”

He then adds that “this may possibly have been the æra of *formally introducing the feudal tenures by law*; and perhaps the very law, thus made at the council of Sarum, is that which is still extant, and couched in these remarkable words.” Here he quotes the second chapter of King William’s laws, which decrees an oath of fidelity and obedience to him; and adds another, commanding the nobility, &c. &c. to be always ready with arms to perform the military services *due \* by reason of their fees*. He finally states, that “this new polity, therefore, seems not to have been *imposed* by the Conqueror, but nationally and freely

\* Not by that, but by a previous law.



adopted by the general assembly of the whole realm \*."

Now if from the word "*therefore*" it is to be concluded, that, upon the circumstances he has suggested, *the feudal system was freely adopted by the general assembly of the kingdom*, in contradistinction to the being imposed by the act of a conqueror, I must submit, that the case made out rests upon premises which seem more than doubtful. In the first place, the assembly at Sarum in 1085 is not mentioned as a great Council by the historians Tyrrell, Carte, Lord Lyttelton, or Brady; neither is there any law or charter stated to have been made or promulgated there. The Saxon Chronicle, as quoted by the learned Judge, carries him no farther than that the meeting was a Magnum Concilium, in which the authors mentioned have not concurred; and that Chronicle, besides, states no laws enacted. All agree that an oath of obedience, fidelity, and vassalage, was taken at Salisbury to the King, but no more is said. This was a particular oath, probably a *ligence homage*, enjoined on an emergency, after a great alarm of invasion, and when the King was

, \* It is here supposed, contrary to other authorities, that both lay and ecclesiastical fees were subjected to military service at the same time; hence the observations used generally in regard to both, are taken as applying to Church lands particularly.



going abroad \*, different from the homage *done to the lord upon investiture*. The supposition that *the very law thus made at Sarum, &c.* carries the reasoning too quickly forward; for it is not shown *that any law was made there,*<sup>1</sup> but that an oath of obedience was taken. The law was part of a general code; but the meeting and oath mentioned in the Saxon Chronicle appear to have occurred on the exigency of a special occasion.

The idea of William I. having *proposed, recommended,* taken occasion to use *remonstrances*, in order to *incline* the nobility of England to the measure of the feudal system, or to any other of his determinations, is, I must be allowed to say, notwithstanding the high character of the learned authority from whom I dissent, totally inconsistent with the most generally received accounts of that period. The matter of the alleged weakness of the kingdom, stated as producing *immediately*, i. e. the next year, the laborious compilation called Domesday-Book, and the ascribing of the introduction of a foreign army to the weakness arising from the discontinuance of the Saxon military establishment, and the delay of any other being adopted, are equally incompatible with the received historical accounts of the respective transactions. The orders for the compilation of that celebrated statistical monument

\* As was then the case.—*Carte*.



of our ancient condition are known. And there is nothing to induce us to suppose that William did not confer all his grants originally under the feudal stipulations, of which military service was the principal. It is not likely that a Prince of his acknowledged abilities, and under his circumstances, would confer them without the concomitant and appointed obligation of military service; they of course began immediately after his coronation \*. There seems, therefore, no

\* So far from Domesday-Book being the immediate consequence of the meeting at Sarum in 1085 (or, as some have it, in 1086), the orders for its compilation were given several years before, that is, about the fourteenth year of the Conqueror's reign, anno 1080, and it was finished in the twentieth, anno 1086.—*Brady, Hist. William I.* p. 206, on authority of Little Domesday, fol. 450 (which is correct as to the finishing), and he names some of the commissioners.—*Carte*, vol. i. p. 436, on same authority. *Tyrell, Hist. William I.* p. 53, on authority of *William of Malmesbury* and *Florence of Worcester*. *Matthew Paris* says, that the Conqueror in the year 1067 put all the land under the yoke of servitude, which can mean nothing else than the feudal military prestations, and alludes only to lay possessions, as he mentions afterwards that the ecclesiastical tenures were enrolled as military fees in the year 1070.

The law which the learned Judge has quoted (vol. ii. p. 49), as probably made at the meeting at Salisbury, anno 1085, is part of the code found in Wilkins, and the Red Book of the Exchequer, which Lord Lyttelton says (vol. i. p. 59) was made in the fourth year of William's reign, which is fifteen years before; and this is supported by other historians. It is remarkable that the quotation made by Blackstone from the Saxon Chronicle does not agree entirely with that au-



ground whatever for believing that the imposition of the feudal prestations, either on the secular or ecclesiastical fees, was the act of any national assembly.

With respect to the forest-laws, than which a more unreasonable and oppressive set of sanguinary restrictions could not have been devised, I do not find it any where suggested that they sprung through a national legislative channel, or from any source, but an absolute autocratic fiat, disregarding equally the sanctions of reason and every call of humanity, in the gratification of a favourite passion \*.

thority, as published by Bishop Gibson; and the meeting at Salisbury called a Magnum Concilium is thus described: "Postea (Rex) sic itinera disposuit ut pervenerint in festo iuniorum ad Scarebyrig, ubi ei obviam venerunt ejus procere, et omnes prædia tenentes," &c. There seems reason to think that this meeting was in 1036, and that there was another in the preceding year but the date of the orders for compiling Domesday certainly preceded both these periods by several years.—See A short Account of some Particulars concerning Domesday-Book, printed by the Society of Antiquaries, 1756.

I have been led thus far upon a subject which may seem not very material to my object, in order to place in a correct point of view the state of our government after the Conquest, and in order to justify my dissent from so respectable an authority as Judge Blackstone, who is followed on this head by many other writers.

\* The original documents establishing them do not appear to be preserved, as far as the author has discovered.



The last important legislative act of William I. is the disjunction of the old jurisdictions of the county-courts. Although some part of the consequences of this measure will subsequently be found connected with a branch of my subject, I shall here confine my observations to the *authority* from whence it proceeded. This has been represented in a manner which, when examined, will hardly be found to ascribe a participation in the legislative power to the Commune Concilium. A very well informed historian \*, after reciting the principal clauses of the document, says : “ Such was the purport of this famous charter, establishing a new method of judicature in ecclesiastical matters, and containing regulations passed in a general council of the nation, with the consent of the bishops, abbots, and all the principal nobility.” These expressions certainly imply the concurrence of a deliberative body ; but how far the whole context of the charter implies any other authority than that of the King, I cannot refrain from doubting : the charter is given by Dr. Brady, and in the following quotation from it, the legislative power of the King and the council respectively may be considered :

“ W. Dei gratia Rex Anglorum, &c. Sciatis vos omnes et cæteri fideles mei, qui in Anglia manent, quod episcopales leges, quæ non bene, nec

\* Carte. And Dr. Henry writes in nearly the same manner.



secundum sanctorum canonum præcepta, usque ad mea tempora in regno Anglorum fuerint, *communi concilio, et concilio archiepiscoporum, et episcoporum, et abbatum, et omnium principum regni mei, emendandas* judicavi; propterea *mando et regia auctoritate præcipio*, ut nullus episcopus, &c.  
 . . . . . Hoc etiam *defendo et mea auctoritate interdico*, ne nullus vicecomes," &c. . . . . There are no other expressions in it connected with authority, advice, or consent\*.

Upon this I submit, that a fair translation and true understanding of what may be called the enacting clauses will be given, by stating the new regulation, to be *commanded and ordered by the royal authority, with the advice or counsel of the Common Council, and of the archbishops, &c. &c.* The concluding words, "*mea auctoritate*," seem to be explanatory and declaratory of the distinct authority used, and the measure may, upon the whole, in some degree resemble the act of a King of the present times in the exercise of the high constitutional functions depending on his *authority*, with the *advice* of his council, but does not describe any enacting power in the ecclesiastical or secular advisers mentioned.

\* Brady, History, vol. ii.—Appendix, No. XI.



I shall proceed briefly to notice the principal events occurring in the subsequent reigns, which show the powers of the Crown, as affecting the liberties of the subject.

Historians have transmitted us but little detail on those topics during the short reign of William Rufus. If his government was at all different from that of his father, the change was not in favour of the liberty, or the ease of the people; he was more ferocious, prodigal, and rapacious, than his father; and besides, illiterate, vain, and affecting magnificence. Under such a Prince no revenue could be sufficient, and manifold exactions were in consequence practised.

The reign of Henry I. affords somewhat more subject of remark: his succession, like that of his predecessor, was irregular, and for that reason, in order to secure his advancement, he agreed to grant a very favourable charter, chiefly in alleviation of the rigours of the feudal customs; it contained, however, nothing in favour of general liberty to the lower classes. But of whatever consequence the concessions in this charter might appear at the time, they proved in fact of no avail, because they were never observed. The facility with which engagements of that nature were broken, is equally astonishing and lamentable. The Conqueror had granted a charter



also, but there is little use in noticing it, when, from the wretched state of affairs, it was immediately disregarded, and soon totally forgotten. That of Henry I. however, deserves some attention, as forming the ground-work and model of the more celebrated effort in the reign of John. It did not touch in any degree the legislative authority, nor is it stated to have had any good effect even with regard to the abuses it professed to remedy, or the improvements intended to be introduced. It can hardly be better described or commented on, than in the terms Mr. Hume has used for that purpose. He says, "The very form of this charter of Henry proves, that the Norman barons, (for they, rather than the people of England, are chiefly concerned in it) were totally ignorant of the nature of a limited monarchy, and were ill qualified to conduct, in conjunction with their sovereign, the machine of government. It is an act of his sole power, is the result of his free grace, implies several articles which bind others as well as himself, and is therefore unfit to be the deed of any one who possesses not the whole legislative power, and who may not at pleasure revoke all his concessions." He says farther, that to give greater authenticity to his grant, he lodged a copy of it in an abbey in each county, "as if desirous that it should be exposed to the view of all his subjects, and remain as a perpetual



rule for the limitation and direction of his government." Yet he never complied with its provisions; and being a Prince of vigour, and talents for government well suited to the age; he was able to pursue a reign of no inconsiderable length, during which his subjects obtained no redress, either for his unfulfilled promises, or the hardships to which his expensive wars and domestic irregularities subjected them. In the true spirit of the age, his life seems to have been spent in the dangerous toils of war, and an extensive gratification of less honourable pursuits. A striking trait of the character of this reign is given by the above-cited historian, when he represents that the King, " finding greater opposition was often made to him when he enforced the laws than when he violated them, was apt to render his own will and pleasure the sole rule of government, and on every emergence to consider more the power of the persons whom he might offend, than the rights of those whom he might injure \*." Henry exceeded his predecessors in the cruelty of punishments; for to him is ascribed the law, that to the loss of the eyes for killing a stag, added the most horrible and degrading mutilation that savage wildness could inflict †. Under a Prince so much engaged in foreign war, and addicted to his plea-

\* Hume—Reign of Henry I.

† Carte, Tyrrell, Brady.



tures, the revenue could not be productive, nor the means of supplying it regarded; and it is even alleged that torture was used to enforce the excessive exactions of his officers \*.

There is a code of laws attributed to this King, but by what authority they existed seems uncertain. Mr. Tyrrell says, he could discover no authority of any great Council for them, neither is there any charter containing those here alluded to; and although they are found in the Red Book of the Exchequer, there appear good reasons for supposing that they were not enacted by Henry I. nor observed in his time †.

The sittings of great Councils during this reign begin to be mentioned more particularly by historians. In order the better to understand the principal objects of their discussions, it is necessary to have in view the ecclesiastical part of their composition, because, out of the concerns of that powerful and numerous order, arose many of the occasions of their meetings in this age.

The Duke of Normandy, in effecting his arduous enterprise upon this country, found it necessary to obtain the aid of the church of Rome,

† Carte, and Lord Lyttelton.



then eager to advance its pretensions in secular affairs, in every possible direction. In Britain it had already some footing, which, through this bold (and on the Continent popular) adventure, was zealously improved; and the Bishops were ultimately successful in establishing a most powerful ascendant in the English state. The utmost exertions and talents of our most distinguished Princes were barely able, in succeeding times, to counteract this deep-laid influence, and vindicate their own proper authority. William, although he was able to repress the more important advances of this enterprising power, could not, from the nature of his circumstances, avoid suffering some considerable increase being given to the weight and consideration enjoyed in that age by the dignitaries of the Church. His policy of including them as *tenants in capite by military service*, peculiarly entitled them, by the usage adopted, to appear in the state assemblies of the monarch; and thus materially connected in the concerns of the kingdom, their influence became predominant. That hierarchy was besides favoured in some degree by the Conqueror and his successors thitherto, on account of the countenance and assistance given to the former as just alluded to, and by the latter, in return for the ready performance of their respective coronations, which was then of very essential consequence to-



wards fixing a prince upon the throne \*. Hence, then, the extensive interests of the clergy, and the numerous objects which at that time were under their cognizance, occasioned the frequent agitation of questions in the great Council, in the decision of which, the laity took most probably little or no concern ; and in this way, have many of those assemblies been handed down in histories, as great Councils, although convoked for no other purpose than some ecclesiastical regulations, on which the clergy might not be able otherwise so effectually to decide. And although they are in general represented to have been particularly oppressed by the pecuniary exactions of these reigns, yet the superior orders did not avail themselves the less of their privilege in the state-assemblies on account of occasional heavy taxations, but the contrary ; and it is one of the surprising circumstances of that age, that, notwithstanding the excessive oppressions of extortion experienced in every way, and that great Councils are said to have been held in several years, immediately following, or perhaps during their actual operation, yet we find no complaints, nor any mention of illegality or grievance in this respect ; no legislative remedy is attempted.

\* It is to be remembered that William Rufus, and Henry I. were neither of them legitimate successors to the crown, and therefore, the speedy performance of the coronation-office was extremely important to them.



The reign of Stephen is not remarkable for any change in the particular objects of my immediate inquiry. It affords, however, a glimpse of satisfaction, that, in some part at least of the community, the depression thitherto experienced had not entirely extinguished every feeling of duty ;—some degree of reciprocal attention from the possessors of the throne was supposed to be due to the subject, and was endeavoured to be secured. This Prince, being also an usurper, granted a charter in order to facilitate his succession ; but it was for no other purpose than confirming what had been nominally granted by his predecessor. What has been alluded to as chiefly remarkable in this reign, is the reservation under which the clergy gave their allegiance to Stephen, declaring it to be binding only “ so long as he preserved the liberty of the Church, and the power of its discipline \*,” and many of the nobility also made stipulations upon swearing fealty. That there should be considerable difficulty in this succession, is not to be wondered at, seeing all had before taken oaths to the daughter of Henry, who was the legitimate heiress to the Crown. But it is one of the inconsistencies of those times, that oaths formed almost the only security taken for the performance of any engagement, while it con-

\* Tyrrell.



stantly appears, that even the best characters frequently disregarded them, and the Church exercised a power of absolving from their effect.

The reign of Stephen was passed in a state of warfare; and it is extraordinary, that when he was liberated from captivity and restored to the throne, no additional precaution was taken against the excessive oppressions of the royal power; the right succession of Henry II. with the concurrence of his mother, was the principal point thought of. Mr. Hume might well observe under the preceding reign, that the barons were incapable of adjusting or managing with the King an equitable government in the form of a limited monarchy; for here, the legitimate heirs to the Crown, together with a large proportion of the power of the kingdom, having the usurping Prince in their hands, neglected all provision in favour of liberty, when they evidently might have imposed effectually any terms likely to secure it. In other respects, during this reign, the royal domains were much diminished by grants of lands, owing to the liberal disposition of Stephen, and the frequent urgency of his affairs, calling for sacrifices and gratifications to his adherents.

Henry II. succeeded under advantageous circumstances; the popularity and prejudices of the



time were in his favour, and not undeservedly; he possessed general talents, vigour, and firmness. Unlike his predecessors, he was under no obligations to the clergy, or any powerful subjects, for advancement to the throne, and was, therefore, able to pursue a strong, firm, and efficient course of policy, towards correcting the universally disordered condition in which he found the kingdom. As we advance in the history of England, we find fuller accounts of the national affairs, yet there is nothing material of change in this reign, as to legislative authority. But, in the detail preserved of the transactions of the celebrated assembly at Clarendon, and its consequences, we can see more distinctly than before, the power which the King possessed, either in putting his will into the practical form of law, at a great Council, or in altering that law, as it suited his purposes, by his own sole authority, with equal effect. Henry had some points to carry against the interest and authority of the Church, which at that time possessed the most formidable power in every kingdom. If Princes dared to oppose its measures, they run the risk of excommunication and deposition by the Popes. Not an hundred years before, an Emperor of Germany, labouring under the effects of such an extraordinary condemnation, was reduced to the miserable necessity of supplicating a Pope for



forgiveness, and reinstatement in his authority, by the most humiliating and painful personal degradation\*; and for an hundred years afterwards, a Pope could still dispose of the sovereignty of an independent kingdom, to any person whom he chose to select for such a mark of his favour. The power of the Church seemed without bounds.

\* The Emperor Henry IV. a prince possessing great talents, in order to be relieved from the effects of the displeasure of Gregory VII. was under the necessity of presenting himself at the gates of the castle where the Pope was residing at the time; there, at the outer barrier, he was obliged to dismiss his attendants, and enter alone; he was then required to divest himself of the garments appropriate to his rank, and to put on a coarse woollen jacket, in which, and bare-footed, he was obliged to pass three days and nights, fasting, in the open air, in the middle of winter, before he could be admitted within the inner gates, to hear upon what conditions the Pope would consent to his reinstatement.—*Gen. Hist. Dictionary. Robertson's Hist. of Charles V.*

For farther instances of the power of the Popes, see Hume's Hist. vol. i. p. 195. The excommunication of King John, and the absolution of his subjects from their allegiance, are well known. In the 39th of Henry III. we find his son Edmund receiving *investiture* of the kingdom of Sicily and Apulia from a Pope's legate, sent into England for that purpose. In the 34th of Edward I. that great Prince was absolved by the Pope from his oath, for the observance of the charter of the forest.—*Tyrell, Carte, Brady.* And King Henry II. a Prince of rather a superior mind, gave, in his own person, a signal instance of superstition at the tomb of Becket.



Henry himself, in the beginning of his reign, found it necessary to apply to the Pope\*, (an Englishman, and said to have been of servile birth), in order to justify an invasion of Ireland, which he meditated without any good cause or title†, and in which the Pope had just as little right as the King.

The clergy being already in some degree in the exercise of the power whereof it was the King's intention to deprive them, it was thought expedient to have the sanction of one of the great Councils, the more especially, as the haughty and imperious Becket was then primate of England, and the strongest opposition was to be expected. In the proceedings of that assembly we find unanswerable evidence of the power of a King of England in the national Council. The bishops having debated, and delayed their consent to what Henry had ordered to be done, he threatened them without effect; upon this the whole body of the nobility came suddenly among them, in menacing attitudes, and accosted them thus: "Take notice, you who condemn the laws of the realm, who refuse to obey the orders of your sovereign, these hands, these arms which you behold, are not ours; they are the King's: our whole bodies are his, and at this instant most ready to be em-

\* Hadrian IV.

† Lord Lyttelton.



ployed in his service, or to revenge any injury done him, in such manner as shall be most conformable to his will, and at his least nod. Whatever command he shall be pleased to lay upon us, we shall think it most just, and obey it most willingly, without examining any farther. Be better advised ; incline your minds to what is required of you, that, while it is in your power, you may escape from a danger which will very soon be inevitable \*."

This language is not, perhaps, correctly the same that was used, but seems made up, according to a custom which many historians have unwarrantably used, of penning speeches and declarations upon great occasions in their own terms ; a practice the more censurable, as in important transactions, the greatest fidelity should be peculiarly observed. The noble author, however, has, it is to be presumed, been correct in the main, as he immediately remarks, how detrimental such conduct was to the dignity of the assembly, and unbecoming the nobility of England. It must be needless to add, that the result of this Council was the accomplishment of the King's desire †.

\* Lyttelton—History of Henry II. vol. iv. p. 23.

† This occurrence is very differently related by Hume, who says the propositions offered by the King were voted *without op-*



As this Council. was not held at one of the stated festivals, it therefore might be supposed to be called through a necessity for that power being employed to effect the intended change; it is not, however, from thence to be inferred, that the constitutions of Clarendon, to which I now allude, were legislative acts (properly speaking) of that assembly. The record remains, and states the proceedings to be "*recordatio vel recognitio*" of certain customs, &c. made before the King by the prelates, named, and in the presence of the nobles, also named \*. But it was to have the effect of law, and such was the form the King chose to put on it.

When in a measure against so powerful a body as the Church at that time, a prince would employ such means as have been described, after all others had failed, it will not be supposed that any opposition of the temporal nobility, short of actual force, proving superior to the royal power, would prevent the completion of his purposes.

There are many *Parliaments* mentioned by Lord Lyttelton in this reign; that term, unexplained, in English history, certainly conveys an idea of *opposition*, which is contrary to the accounts of all other historians I have seen.

Lord Lyttelton, and Brady.



a Parliament as now known, in its functions and construction, but in so much it is a wrong expression, having the effect of misleading the reader into a notion that Parliaments existed then as now, which, as will soon appear, is very far from being the case. The legislative power, it will be seen very plainly, was exercised by the King; but as he paid the compliment of assembling the *Magnum* or *Generate Concilium* frequently, reason has thence been furnished for some historians to suppose, that the laws of this reign were enacted by that authority.

It has been shown how the constitutions of Clarendon were declared to be laws; it was indeed alleged at the time, that they were part of the ancient customs of the kingdom, and in many respects ancient customs were the only law. This King, however, who is praised by all historians, and held to have been one of our greatest and best sovereigns, cancelled of his own authority, without even any form of concurrence of his Great Council, the most important and useful part of that very same law, whether it be called by the name of constitution or custom. Some of the clergy were then the most dissolute characters of the age, and the King had caused it to be recognised at Clarendon, that the secular power should judge and punish such gross violations of the public



peace as they committed. This, the Primate contended, was the province of the ecclesiastical power, and to be exercised by its functionaries. But that provision, which it was so becoming for the King to fix in a suitable and efficient manner, he abrogated by *his own sole authority*, about twelve years after it had been established \*.

There was another important law passed in this reign, called the assize of arms, which materially affected all ranks of subjects; and there is every reason to believe that it proceeded from the sole prerogative of the King. Lord Lyttelton does indeed say that it had the assent of "*Parliament*," in his accustomed style; but his assertion is unsupported by any authority, and is not so stated in any other history that has fallen within my observation †.

But the most indefensible of all the acts of arbitrary power exercised in those or any other

Lyttelton, Berington, Carte.

† Except Brady, who makes a slight marginal supposition of assent from the Great Council. But I have nowhere found mention of any Great Council in that year (1181), nor for several years after. Blackstone, speaking of this, says it was "enacted 27 Hen. II.; and that it was held to be binding may be concluded, as it appears to be referred to in the statute 13 Ed. I. st. ii. c. 6, in the usual style of that time, by the King's



times, were the measures adopted by Henry II. when at the height of his contest with the Pope, and the Archbishop of Canterbury, Becket. He then, of his own authority, prohibited the clergy from receiving or executing orders from the court of Rome or the Archbishop, or having certain intercourse with them, which, without a breach of their canonical engagements, they could not refuse; he likewise forbade the bringing of letters of interdict into the kingdom, which any one might innocently do in ignorance. Such, and other provisions were enforced under the most cruel and savage penalties. He also banished all the Archbishop's relations, friends, and dependants, without distinction of age or sex, to the number of about four hundred, seizing at the same time their lands and goods\*. One of his ordinances confiscated the goods and chattels of all who "*favoured*" the Pope or the Archbishop; and the possessions of all who belonged to them, of whatever degree, order, sex, or condition, were to be forfeited to the King.

authority." Mr. Berington says (p. 317), that the aristocracy were not even consulted in this measure. There is an instance of this King making a law, binding on England, in a council abroad, consisting of some barons and prelates of England, and of the French provinces then subject to Henry.—*Hume*, Hen. II. Anno 1176.

\* Lyttelton, Berington's Hist. of Hen. II. Tyrrell, &c. &c.



These examples of the manner of government in this reign, must be sufficient to show the nature of the legislative power which then prevailed. Mr. Berington says, “ I will also observe how idle it is in some modern historians to talk of *acts of Parliament*, or of a *system* of legislation, at a period when our government was so precarious and undefined, that the will of the monarch alone sometimes constituted law, and sometimes a headstrong aristocracy checked its most salutary operations.” To this it may safely be added, that the aristocracy never controlled the will of the Prince in general legislation, unless in cases of succession with illegitimate titles or inadequate talents.

There is one observation more worth attending to in this reign, in regard to taxation : Henry II. although he sometimes employed unwarrantable means of raising money, yet, upon the whole, furnishes an example to show, that, under an active and vigilant Prince, the natural revenues of the Crown were, even after the great dilapidations of Stephen’s reign, sufficient for the ordinary purposes of government, if undisturbed with foreign war \*.

\* It was then the custom for princes to have great sums of money and valuable jewels laid up in their treasuries. Henry is said to have left nine hundred thousand pounds in gold and silver, equal to an incredible amount of our present money.



The short reigns of Richard I. and John afford no ground for any conclusions materially different from what precedes. The power of the King in raising money by every sort of injustice, in suspending the laws and customs, and enforcing new rigours, particularly in the forest-laws, affecting cruelly all ranks of men, continued the same. The taxes under Richard were particularly grievous and unjust. To give any detail of those reigns would, in general, be only an useless repetition of occurrences of the same nature and effect as before related \*. But the ideas of the people,

His taxes were few, considering the length of his reign, the extent of his dominions, and his family, which in many respects must have been a source of great expense. In this reign we have a singular instance of the heir-apparent being actually crowned king during his father's life, and the full enjoyment of all his faculties.

\* Sir William Blackstone, in his chapter on the rise, progress, and improvement of our laws, mentions a body of naval laws made by Richard I. at the isle of Oleron, which he says "are still extant and of high authority." In Mr. Tomlins's edition of Jacob's Law Dictionary. (title, Navy) it is stated, apparently on the authority of Coke's Institutes, that this code, called the laws of Oleron, received by all nations in Europe as the ground of their maritime institutions, "was confessedly compiled by our King Richard I. at the isle of Oleron," &c. Now the only laws that appear to have been made on maritime affairs by this King, are :—1st, *An edict of the king*, when abroad, but not while he was in the isle of Oleron, for I cannot find that he ever was there. In this, according to M. Patis, he constituted



even of the superior ranks, in regard to legislation, good government, and liberty, are again strongly marked in the reign of John two years previous to the granting of the Great Charter. This Prince, by his weakness and incapacity, had suffered himself to be reduced completely under

certain persons, among whom are an archbishop and a bishop, "justiciaries" over a fleet composed of English, Normans, Bretons, and Poitevins, which were employed in an expedition to the Holy Land, and delivered them various orders of his own authority, to be observed in case of certain offences.—*Tyrrell*, vol. ii. p. 482. The record itself, which is printed in Brady, Appendix No. 72, shows that it was done at Clunon (in Touraine). These regulations seem to have been ordained for the purpose of enforcing order in a fleet composed of men of so many different countries acting together; there appears nothing in them upon matters of general commercial policy.

2dly, The same Prince, while at Messina (anno 1191), made a law of a different nature concerning shipwrecks, which is also of his own authority.—*Tyrrell*, vol. ii. p. 491.

If the laws of Oleron were really made there, and if they were not made by the King's authority, it must follow that he held a *Continne Concilium* of England in that island, which has never been imagined.

It is impossible not to notice with surprise the strange error into which several learned authors have fallen concerning the "laws of Oleron." That Richard I. made those now specified of his own authority, seems sufficiently clear. His government in general was in other respects not more regular or legal than the examples in the reigns of his predecessors; he put the clergy out of the protection of the law because they refused a tax imposed by his authority.—*Tyrrell*, vol. ii. pp. 563, 561. *Cante*, vol. i. p. 774.



the power of the Pope, and that power was administered by Archbishop Langton, a subject of the kingdom. John had become so circumstanced, that any terms whatever might have been made with him; yet notwithstanding all the grievous sufferings that had been so long experienced, neither the Archbishop nor the barons who co-operated with him, adopted any measures for defining the power of legislation, or securing the administration of justice, but such as had uniformly failed in every instance since the period of the Conquest. They desired no other security in such respects than an oath to annul all bad, and maintain good laws, unspecified, except those of Edward the Confessor generally, and which perhaps not ten men in the kingdom were then acquainted with. It is, however, unnecessary to enlarge on this circumstance, as the nation was so soon after roused into more suitable exertions for alleviating the miseries of the deplorable condition in which it had been so long held, and it then obtained the celebrated instrument called Magna Carta.

Neither this charter, nor any document of the kind, ought to be appreciated, but with a mind in complete recollection of the peculiar circumstances of the country during a long period previous to its being obtained, and capable, if it were pos-



sible, of divesting itself of all impressions of the present times, except when necessary for comparison; so viewed, and carefully considered, that instrument will be found to have been an acquisition, in a certain sense, of immense value; but adopting, as we so readily and naturally do, the influence of the existing state of society, and mixing its provisions with present circumstances, or speculative views, we are apt to make an unfair estimate and application of its clauses, while we gain little practical advantage from the investigation. We constantly see, in treaties between nations, when by the fortune of war the terms are extremely unequal, and prejudicial to one party, that the agreement is not lasting; it is inconsistent both with nature and experience, that a very unequitable arrangement should be held undisputed, when it happens that the depressed side sees means of resuming its supposed rights. The obtaining of King John's charter was too sudden, and the changes it produced too great, to be easily or at once established; and it was accordingly very soon broken. And it forms not the least instructive reflection to be derived from the consideration of that transaction, that the general ultimate inefficacy of extensive and sudden changes in governments is shown in a clear light. Looking from this charter to the circumstances that had long preceded it, and those that immediately



followed, many important observations occur; but if the view be restricted to any substantial and permanent advantages really gained by it, to the improvement of the condition of the people in general at the time, the result will be far from satisfactory, as in point of fact it effected little practical benefit whatever, unless as a model and example for future times, first to adopt, and ultimately to improve.

The science of government was then so ill understood, that no provision was made by the charter against the enactment or operation of bad laws; no effectual expedient was devised to secure a national system of legislation; the celebrated clause against imprisonment, or judicial proceedings against any one, unless by the laws of the land and the judgment of his peers, must have been of little avail while nothing was provided to restrict the making of a law declaratory of any new offence for which men might be imprisoned, or a rule by which they might be tried; and as there must have existed an authority competent to those necessary purposes, it was not difficult to make oppressive laws, without infringing any of the articles of the charter.

Upon all occasions of grievance hitherto, the laws of Edward the Confessor formed the sum of



the remedy sought ; the Conqueror had granted them with some alterations ; then Henry I. professed to restore that code so amended, together with some abatements of the feudal rigours. Stephen confirmed Henry's grant, and Henry II. confirmed also what his grandfather had granted. The laws and liberties, therefore, before the sealing of John's charter, stood upon the tenor of that of Henry I. It may, then, be asked, what were the provisions with respect to legislation in the laws of the Confessor so confirmed ?—There were none.

Then came the charter of John : it appears by the practice of those times that the latest charter granted or confirmed was alone held to be the ex-

\* Dr. Brady, in his answers to the " *Argumentum Antinormanicum*," and Lord Lyttelton, in his " *History of Henry II.*" have investigated that code of laws ; but it is nowhere said to contain any clause, declaratory of the legislative power. Mr. Tyrrell, in his " *History of England*," gives a detailed account of the most approved copy of it ; many other authors notice it, and it can only be said to contain an enumeration of certain customs in regard to fines, penalties, and various points that cannot well be generally described, which had been selected and observed (or intended to be observed) in the administration of the government ; and Judge Blackstone builds upon it, the " most plausible conjecture (for certainty is not to be expected) of the rise and original of that admirable system of maxims and unwritten customs which is now known by the name of the common law."—*Commentaries*, vol. iv. p. 412.



isting authority ; and as this takes no notice of that of Henry I. or of the laws of the Confessor, it follows that no part of either of those codes would be held binding on John, but in as much as they were provided for by his deed. This principle seems to have existed long, and hence the repeated confirmations of Henry III.'s charter and various laws which are to be found as late as the fourth of Henry V. anno 1416 \*, and are more frequent in every preceding reign. John's charter may, therefore, be supposed (and, I believe, is so considered) to contain not only the whole law of the time, but *all the laws and liberties that were desired*. It omits several important concessions which were made by Henry I. ; for as the Kings required that such feudal relaxations as they granted to their tenants *in capite*, should in like manner be extended by them to their vassals ; and as the barons were more strict and severe to these, than the King's officers to the barons, it naturally happened that the less was insisted upon from the King. Previous to the time of John's charter oppressions of every kind had been experienced ; laws had been made, and taxes imposed by the authority of all the Kings respectively : what, then, were the alterations it made ? They consisted in various regulations for particular points



and occasions specified; and the following are alone necessary to be noticed here. It declares *that no taxes shall be imposed in future but by an authority which it describes and appoints; and with respect to personal liberty, it provides against the imprisonment, disseisin, outlawry, or banishment, of any free man, otherwise than by the judgment of his peers, or the law of the land.* The law of the land may be taken to be whatever had hitherto obtained, that was not altered by the specific provisions of the charter. It made no new regulations for future legislation, neither did it abrogate any preceding authority used as to general laws, nor establish any new sanction or consent as necessary to laws that might, by new occurrences or considerations, be rendered expedient. All this seems to be left on its former footing.

What opinion, then, is to be held of the acknowledged legislative authority in those times? This charter was obtained by a combination of all that was great and powerful in the state, against an ill-deserving and ill-fated Prince, who before he consented, was reduced to the last necessity, and could not resist any demand that might be made; it may, therefore, be fairly concluded, that every concession desired, was granted. Is it then to be supposed that the authority was legal and acknow-



ledged, from whence the various constitutions, ordinances, and pleas of the Crown had emanated since the Conquest? They are much more numerous than my limits would admit to be cited, and must have formed the basis and law of many cases affecting the liberty of the people, and the issue of civil and criminal causes, both on subjects altered by the charter, and those allowed to remain as in former practice. Shall it be concluded that the power of making laws was left in the same hands as before, but that it was required, publicly and previously, to declare such actions as were to be deemed offences, subjecting persons committing them to imprisonment and other consequences? Was it meant only to guard against ex post facto laws, or the more injurious practice of prosecutions for imputed offences, and on false accusations, for the purpose of gratifying private revenge? If such are not true conclusions, we must suppose that the power which had hitherto occasioned all the oppressions and injustice complained of was in itself illegal, although no declaration to that effect was made. But no peculiarities of the age, extraordinary as they were, can account for so important an omission affecting personal safety, by parties quite alive to protection against pecuniary impositions.



It is probably true; as has been stated, that the private interests of the barons contributed to prevent their requiring very great sacrifices of the feudal rights; and considering, besides, how much of the general distribution of justice, such as it was, remained under the jurisdiction of the barons in their respective honours and manors, it is easy to conceive that they might forbear attempting too many abridgments of the royal prerogatives, lest they should also be obliged to give up similar portions of the powers hitherto exercised by their order. Yet this consideration will only account for no greater abatement of the feudal rigours than the charter provides; and if the legislative authority hitherto exercised by the Kings was not in fact considered legal, to omit correcting it seems quite inexplicable.

Dr. Henry, in commenting on the different parts of the charter, says upon that which provides against imprisonment, banishment, &c. unless by the legal judgment of peers of the party, or by the law of the land, that it is "the grand security of the liberties, persons, and properties of the people of England, which cannot be unjustly invaded if this law is not violated. The expressions in the charter, We will not go upon him, We will not send upon him, signify (continues the historian), that the King would not sit in judg-



ment, or pronounce sentence, on any freeman, either in person or by his judges, except by the verdict of a jury, or by a process conducted according to the established laws of the land. By this last expression trials by ordeals, by judicial combats, and by compurgators, are probably intended, as these were all in use at this time, and agreeable to law." Now these very trials by ordeals—this part of the "law of the land," were suspended and altered by the succeeding King, Henry III. in the third of his reign, *by his own edict in council*, notwithstanding he had confirmed it by his own charter. It is immaterial to my position, whether the alteration of the law be an improvement or not; it is *the authority by which laws might be made and altered* that I am investigating. Some authors, in noticing the ordinance which announced the change of this law to the judges, represent it as done in Parliament or the Great Council; but it sufficiently appears to be an act of the King, from the words of the edict

\* See Cowel's Interpreter, voce *Ordeal*; and Spelm. Gloss. voce *Judicium Dei*. From some expressions in it the alteration might seem temporary; But that it was continued, we have several authorities, particularly Blackstone; and he also seems to notice tenderly Sir Edward Coke's mistake, who is one of those who attribute it to act of parliament.—*Christian's edition of Commentaries*, vol. iv. p. 344. Sir H. Spelman, after giving the record, says, "*Quod provisum fuit per Regem et Con-*"



But this charter, whatever consequences it may have produced, was hardly in full effect throughout the kingdom, when it was abrogated by the shameful duplicity of John, aided by the power of the Pope. The King had sworn to observe the articles of the charter in good faith, and without any evil intention: one of them was, that he would obtain nothing by which any part of it should be revoked or diminished; if any such thing had been procured, it was declared to be of no avail, and he engaged not to use it by himself or others. To all this he had solemnly affixed his seal; yet the wax was scarcely cold, when the whole was cancelled, by authority of the Pope, at the instance of John; and the barons who would not relinquish their endeavours to accomplish its fulfilment were declared excommunicated.

This charter has certainly been viewed on some occasions in a light to which it is not entitled; for either by reason of the revocation just mentioned, or the posterior grants of Henry III. I apprehend it is not considered as in force; yet it has been often quoted as of authority, and being mis-

*silium, sigilloque regio confirmatum legis procul dubio sub hac ætate vigorem habuit: Parlamenti tamen nomine proprie non censetur."*



printed in several authors, the sense has been perverted\*. This has unfortunately happened

\* That there have been many spurious and incorrect copies of this charter appears from Nicholson's English Historical Library, p. 153; and besides what is there mentioned respecting the old MSS. some later historians, otherwise of good consideration, have been misled in the text they have transcribed, particularly Tyrrell and Brady, who, taking it from Matthew Paris and other mistaken authorities, have also stated that King John granted a charter of the forest.—See Blackstone's very perspicuous and concise account of the charters, whose transcripts of them agree with what has been since published in the Reports on the Public Records by authority of the House of Commons.

The true text is: “ No scutage or aid shall be imposed, except by the common council of our kingdom, but for redeeming our body, for making our eldest son a knight, and for once marrying our eldest daughter; and for these only a reasonable aid shall be demanded — This extends to the aids of the city of London. And the city of London shall have all its ancient liberties, and its free customs, as well by land as by water. Besides, we will and grant, that all other cities and burghs, and towns and sea-ports, shall have all their liberties and free customs. And to have a common council of the kingdom, to assess an aid, otherwise than in the three foresaid cases, or to assess a scutage, we will cause to be summoned the archbishops, bishops, earls, and greater barons, personally, (*sigillatim in orig.*) by our letters; and besides, we will cause to be summoned in general by our sheriffs and bailiffs, all those who hold of us in chief, to a certain day (*scilicet in orig.*) at the distance of forty days at least, and to a certain place; and in all the letters of summons, we will express the cause of the summons, and the summons being thus made, the business shall go on at the day appointed, according to the advice of those who shall be present, although all who had been



with regard to some of the clauses which it was not deemed expedient to continue in the charters of Henry III. but which seem to be of great importance. The barons of the age of John's charter have been most abundantly praised; undoubtedly in that particular instance, they carried into effect, some excellent first ideas of liberty, but they were crude, and, judging by the issue, in many respects ineffectual for the ease of the subject. They have been also censured, and probably with reason, for acquiring more advantage to themselves from the Crown as their superior, than in their capacities of superior feudal lords they allowed to their vassals. But those who praise so liberally this charter and the barons, seem to overlook, that at the short period of two

summoned have not come."—*Dr. Henry's Translation of King John's Charter.*

These clauses are rendered differently by Brady (vol. ii. App. p. 131) and Tyrrell (vol. ii. p. 813). The principal mistakes occur in what respects the privileges of towns, and the assessment of aids from them, viz.

"Furthermore, we will and grant, that all other cities, and burghs, and towns, and barons of the cinque or five ports, and all ports, shall have all their liberties and free customs; and shall have the common advice of the kingdom concerning the assessment of their ayds, or shall send their representatives or commissioners to the common council of the kingdom for the assessment of their ayds, otherwise than in the three cases aforesaid."

This is Dr. Brady's translation, which is unaccountably erroneous in several respects, and what is here printed in italics, is altogether added. Mr. Tyrrell has taken more pains on the subject.



years from its date, they were contented to receive a different grant, and relinquish some of the most material clauses which they had before obtained. These consisted in provisions for the authority that should impose future taxes, a stipulation that none should be imposed otherwise, the appointment of competent judges, and other less important points. *These clauses are expressly reserved out of Henry III.'s charters*, the last of which, and not that of John, is the acknowledged beginning of our ancient statute law \*. The difference in the charters is the more unaccountable, and the less creditable to the barons, as, upon the demise of John, the occasion became particularly favourable for obtaining farther concessions and security. When this, indeed, is considered, together with the reason formally given in the latter charter for withholding some of the clauses in question, viz. because "*gravia et dubitalia videbantur* †," there seems some ground to doubt, whether the authority for taxation admitted by King John's charter, was not very different from what had usually prevailed before.

In respect of taxes in the reign of Henry III. historians have generally stated, that few were raised by authority of the prerogative, and that

\* Statutes at large.

† Charter 1 Hen. III. apud Blackstone.



they were but little, oppressive; this representation, however, is to be taken in a comparative sense with what had preceded, and with the length of the reign; abstractedly considered, they would be found both heavy and irregular. There was, besides, a species of taxation that prevailed particularly in this period, more objectionable than any that could have been imposed by the King, and more discreditable to the spirit and independence of the nation, namely, imposts laid by authority of the Pope upon the clergy of England, for the purpose of relieving the wants of the King.

But the comparatively few taxes raised by royal authority is to be accounted for by the personal character of the King, not by any change in the actual power or right to impose them; this is evinced by the consideration, that although that subject had been so much a grievance as to be regulated by an express clause in the charter of John, yet the early rejection of this corrective stipulation, must be considered to have left Henry III. in possession of the same power in that respect as his predecessors. This Prince seems to have wanted courage to impose frequent taxes, as had before been practised, and he wanted management to obtain them otherwise, yet no King ever stood in greater need of extraordinary supplies, owing to his extravagance



and prodigality. He was, besides, so soft-minded and easily led, that after the ordinary courses of replenishment for the Exchequer were by mismanagement rendered unproductive, he wasted the permanent revenues of the Crown by yielding to the interested solicitations of many of the barons, who basely enriched themselves out of the appropriated estate of their Sovereign \*.

This Prince's character was not of a cast to show the extent of the power of the Crown; and the weakness being soon discovered after he assumed the government, both his authority and revenues became the prey of rapacious and ambitious courtiers during the remainder of his reign; under his circumstances, therefore, had even the detail of his government been handed down to us with modern accuracy, no adequate view of the prerogative of the time would have been exhibited.

As we now approach the æra of the commencement of a more regular and national system of legislation †, it may be proper to notice some opi-

Carte.

† Sir H. Spelman places this æra somewhat earlier; under the word "*Parliamentum*" he says: "E crepusculo jam in lucem veniamus, quam a tot viris doctis istud agitantibus argumentum, miror non inuitam. Johannes Rex, haud dicam *Parliamentum* (nam hoc nomen non tunc emicuit) sed *Communis Consilii Regni* formam et coactionem perspicuam dedit," &c.



nions that seem generally to be received respecting our ancient constitution, but which do not appear to be supported by the facts connected with them that have come to our knowledge. To some of these facts I have already adverted, and many more might be adduced of a similar tendency, namely to show, that laws were made by the monarchs, without the deliberative concurrence or authority of a *Commune Concilium* called for that purpose: a circumstance which is not generally admitted.

The other point to which I allude is, that the changes effected during the period in which I have now sketched our constitutional history, or, rather, all the improvements since the Conquest, are to be considered as steps and parts of a gradual *restoration of a preceding system of government* enjoyed in England; and in this idea it will be seen that the formation of the House of Commons must be considered as included.

It does not appear, to what period in our early condition the reformers of the present day would resort for the new model of this part of our Legislature; but when a repeal of all the laws relative to the Commons' House of Parliament is proposed \*;

\* Sir F. Burdett's Speech in the House of Commons on the 15th June 1809.—See Appendix.



and when, at the same time, the object is declared to be a recurrence to the original spirit and practice of the constitution\*, in the new construction of the House, it seems as if the opinion just mentioned were referred to, and it is therefore requisite that the view of our ancient political state be as little incorrect as it can be rendered.

I have before made some observations on the inadequacy of our means for obtaining satisfactory accounts of many important transactions previous to the Conquest, and also the uncertainty in many respects for a considerable period after it. Under such circumstances, therefore, we must often argue generally, from the natural consequences of the evident condition of society, rather than suppose a system not proved, or incongruous with the known state of the people. I cannot conceive that any of the arguments or objects of the present times can be much affected by our situation, whether in slavery or freedom, nine hundred years ago; but still an understanding of that condition, as correct as we can obtain it, is peculiarly desirable when such alterations are proposed, and such references made, as have been stated; it is, indeed, in other respects desirable, as it will certainly evince a state of improvement, gradually

Ibid. passim.



effected in unison with the varying shape of society, and founded on the results of experience, and of practical expediency. Nothing of the kind can be more clear, than that our happy constitution has been by degrees improved into its present state. To say that no part of it admits of amendment, would suppose a degree of perfection, which unbiassed reflection cannot confirm; but to say that *all* the customs and regulations respecting the representative part of our Legislature are to be destroyed as *unconstitutional*, which has in effect been said, is a proposition fraught with more extravagant absurdity than could be expected to be uttered in any assembly of reasonable persons. I will not, however, at present go farther into this matter.

The position already noticed respecting our present and our more ancient government, has been entertained by an author of the most respectable class; how far the authority of his *opinion* upon so remote a fact should be taken as conclusive when unsupported by evidence, it is not my intention to pronounce; neither will I presume to decide what degree of corroboration from collateral circumstances should be deemed requisite, where evidence is wanting; but I shall take the liberty to state some reflections that occur on the subject from an unbiassed consideration of history.



Judge Blackstone, when treating of the changes effected by the Conquest, and the rise and progress of our laws, says,—"From so complete and well-concerted a scheme of servility, it has been the work of generations for our ancestors, to redeem themselves and their posterity into that state of liberty, which we now enjoy: and which therefore is not to be looked upon as consisting of mere encroachments on the Crown, and infringements on the prerogative, as some slavish and narrow-minded writers in the last century endeavoured to maintain: but as, in general, a gradual restoration of that ancient constitution, whereof our Saxon forefathers had been unjustly deprived, partly by the policy, and partly by the force, of the Norman. How that restoration has, in a long series of years, been step by step effected, I now proceed to inquire."

The learned Judge gives no authority for this idea of a restoration of our ancient constitution, neither can the foundation for such a notion be found in his preceding consideration of our "juridical history" antecedent to the Conquest. In a statement of our legal polity from the earliest times to the Norman Conquest (*ibid.* p. 407), by an author holding the opinion here disclosed, it is fair to look particularly for his



grounds for it. Yet no ground or authority is adduced, except an assertion that no new law could be made, or old one altered, without the concurrence of the “Wittena-gemote, or Commune Concilium;” and it is premised in substance, that this assembly consisted *anciently in Germany* of the principal and wisest men of the nation (p. 412). This supplies no sufficient ground in my opinion for laying it down that the state of liberty we now enjoy (or when Blackstone wrote) is in general a restoration of a former constitution; neither does the word *therefore* warrant the conclusion assumed upon it.

An assertion of our being now in a second age of our constitution, certainly requires more proof than the learned Judge has afforded. That the inhabitants of England were in a worse political condition after, than before the Conquest, is sufficiently probable to be taken for granted; but the species of liberty, and the degree of it enjoyed in this or any country previous to that æra, is of such a nature\* that no comparison can be made, or analogy fairly drawn on the subject.

I am well aware, that what has been stated of the consent of the Wittena-gemote, is the general

\* See two excellent notes on this subject in the dissertation prefixed to Robertson's History of Charles V. pp. 189, 209; also the text to which the first applies.



language of all authors, and that the same necessary sanction is also usually held to have been transferred to the Commune Concilium after the Conquest.

If it were supposed (and there are not wanting strong grounds for belief of the suggestion), that subsequently to the Conquest, the exercise, such as it may have been, of a deliberative sanction to laws was discontinued in fact by the national council although carried on in some appearance, under a possible interpretation of the words of the documents announcing them; the effective recovery of *such* a privilege might be considered as the restoration of an advantage formerly enjoyed; but the meaning of the learned Judge seems of a much more comprehensive nature; the extent of the restoration he had in view will be better estimated when it is noticed, that he states it to have been effected “step by step, in a long series of years;” and more particularly when we observe, that on *proceeding to inquire how the restoration was so effected*, the investigation upon that principle, is carried on even after the restoration of Charles to the Revolution, when in conclusion he says, “that our *religious liberties* were *fully established* at the Reformation; but that the *recovery* of our civil and political liberties was a work of longer time, they not being thoroughly and completely *regained* till after the restoration of King Charles, nor fully



and explicitly acknowledged and defined till the æra of the happy Révolution."

In the limited research which the means of the author of these Reflections have enabled him to make, he has nowhere found any traces of the pristine enjoyment of the political advantages thus regained; he even ventures to doubt the possibility of the thing, from the undeniable state of Europe previous to the eleventh century. "If, indeed, the learned Judge can be supposed to allude to some portion of those rights of nature, the suppression of which no state of society, however it may come to pass, can justify, nor man for himself, it is said, can by any act legalize, and to the loss of which the most remote antiquity cannot prescribe; if the idea were to be explained on such assumptions, little discussion or remark would suffice; but conceiving it to stand differently and more erroneously, the author does not hesitate, notwithstanding the risk of being by some included in "a class of slavish and narrow-minded writers," to state his dissent, however feeble or inconsiderable, from the position. He believes he does not thereby become the advocate for undue prerogative, nor an instrument of deduction from the high merit of those acts which have most conduced to our present political establishment; so different are his ideas, that he holds that merit the more signal, for having effected the changes now in question from a system es-



established, as he conceives it to have been, upon more rooted principles than all “*the policy*,” and all “*the force of the Norman*,” was capable of imparting, or did, in fact, impart; inasmuch as there were to be overcome not only whatever circumstances unfavourable to well-regulated society were introduced by the Normans, but all the other obstructions arising from the natural unhappy condition of mankind in that age\*. But it is unfit to ascribe a very great proportion of merit in this respect to any particular class of men, or any specific time. The mighty difference between the present age and the times alluded to, cannot be referred to human efforts alone; latent predisposing causes, and a continued tendency to improve their effects, seem to be circumstances, under Providence, more powerfully influencing the happy changes that have taken place, than the imperfect actions and doubtful motives of man ought to be supposed.

With regard to the real exercise of the legislative power, there are several circumstances, besides the particular facts to which I have adverted, which incline me to think that the maxim of the consent of Commune Concilium† was destroyed by the Conqueror. That it appears in most authors, a principle in feudal policy, is admitted; but the true

\* See Robertson's History, ut supra, and all accounts of those ages.

† Of whom composed remains to be ascertained.



and practical understanding of what they describe is not always to be taken from the most obvious meaning of their language. I have already observed, that the terms "Communi Concilio, et Concilio Archiepiscoporum," &c. are to be understood as meaning advice, not consent; and whatever remarks the synonymous parts of the meaning of these words may admit of, the difference must be clear, between the advice of a Council, and the consent of a Parliament, or other body exercising the power of a *free, deliberative, and authoritative sanction*. But allowing even full latitude to the meaning of these terms, still the *authority* seems, in ancient times, to have been *undivided*, and to have existed solely in the Prince; and when this is considered, the weight attached to consent will be much reduced. How very improperly some terms were anciently used in these respects, must be manifest to every attentive reader of our history during many reigns after the Conquest; and this is almost equally conspicuous in some accounts, given by modern authors, of general principles and regulations; they are sometimes conveyed in terms which require more explanation than a reader is at first aware of; taken in the meaning which most obviously and at first sight belongs to them, they will often mislead. Let it be supposed that a quotation on the subject of the British constitution, should be made at some very distant time, from Judge Blackstone's Commentaries, setting forth, that the right of



private property is so protected, that "no subject" can be constrained to pay any taxes "but such as are imposed by his own consent, or that of his representatives in Parliament \*;" a very erroneous judgment might be formed on this matter, unless the maxims of the Constitution connected with it, and other circumstances of the country, were clearly understood at the same time. It might be supposed that there was an alternative between two ways of consenting; the one individually; the other by deputation. It might be supposed that unanimity were necessary. It would certainly be supposed, that by the policy of the country, *every subject* whose property was affected by taxation had a vote to give; and hence, however extraordinary it might appear, yet it might be argued, that if deputies for taxation were chosen, the elections were made by universal suffrage. It will be evident from these remarks, that a very wrong opinion might easily be entertained respecting our representation, upon the abstract meaning of the passage quoted, and that in order to understand properly what is described, a reader ought to be informed, amongst other things, that under our Constitution, *certain persons only are intrusted with the choice and appointment of representatives.*

In a similar manner it has been stated, that anciently, the consent of the *Commons* was neces-



sary in legislation, but this requires an explanation of what was then considered to amount to *such consent*; this is supplied by a justly-celebrated antiquary, who says, "There needed not before this (the reign of John) care to advise with the Commons in any publick assemblies, when every man in *England* by tenure held himself to his great lord's will, whose presence was ever required in these great councells, and in whose assent his dependant tenants' consent was ever included \*."

I apprehend that the necessity of the consent of the *Commune Concilium* was in many cases no more than a barren, dormant maxim, found only in the law theory and manuscripts of the time †.

\* Cotton. Post. p. 15.

"Consentire inferior quisque visus est, in persona domini sui capitalis, prout hodie per Procuratores Comitatus vel Burgi, quos in *Parlamentis*. *Knights* and *Burgesses* appellamus."—*Spelman. Gloss. voce Parlamentum, &c.*

† It appears from the passages of the early law-books mostly relied upon by disputants on this subject, that no very direct proof of the maxim is uniformly afforded in them. Much seems to turn on the sense of the word *Consilium* or *Concilium*, (for it is written both ways). If it clearly and exclusively meant consent, the greater frequency of the sanction of the national council would be apparent, but I think it means *advice*, because the words *consensus* and *assensus* were both known, and used when consent appears to have been meant. There is a charter of the Conqueror, printed by Brady (*Hist.* vol. ii. Appendix, No. xii.), which relates to the foundation, &c. of *Battle Abbey*, and therefore proceeds first upon an *assent* of the



Of the real practice in the instances I have adduced, any person may judge; and as it in other re-

ecclesiastical authorities connected with it; and then, in the form generally used by Princes, (although not always by the Conqueror), by the advice of those who are to be supposed his privy council, or in the place of the body of ministers so called, it says, "Wilhelmus Dei gratia, &c. tam ecclesiis quam laicis, &c. Nonnullis vobis me concessisse et confirmasse, assensu Lanfranci Archiepiscopi Cantuariensis, et Stigandi Episcopi Cicestrensis, et Concilio etiam Episcoporum et Baronum meorum," &c. And there are other instances where the distinction seems to have been understood.

But in many cases the arguments turn upon an assumption that *Consilium* means *consent*. In Mr. Tyrrell's Bib. Pol. (p. 233) it is argued, that the legislative power was wholly in the King, though restrained in the exercise according to custom, by the counsel and consent of the Lords and Commons. Against this a quotation is taken from *Bracton*, viz. "Nihil aliud potest Rex in terris suis, cum sit Dei mini ter et vicarius, nisi id solum quod de jure potest; nec obstat quod dicitur, quod Principi placet, legis habet vigorem; quia sequitur in fine legis, cum lege regia, quæ de imperio ejus lata est; i. e. non quicquid de voluntate Regis temere presumptum est, sed quod consilio magistratuum suorum, Regi auctoritatem prestante, et habita super hoc deliberatione."

Now if this was a constitutional description of the legislative power, it was very little different from what had been contended on the other side. The first part of the sentence seems to imply a restraint of law; but if that consisted only in the *consilio*—the *advice*—"magistratuum suorum," notwithstanding the "*deliberatione habita*," it amounted practically to little. There is another quotation from *Glanville* to the same purpose; but such passages surely are not fairly rendered in modern language, by the same terms that denote the present power of the two Houses of Parliament. That state of the case is, however,



spects to be conceived that the barons gave a ready consent to the first forest-laws? Let the restrictions, the penalties, and all circumstances, be

somewhat approached by what is afterwards brought forward from *Bracton*, viz. “Cum legis vigorem habeat, quicquid de consilio et de consensu magnatum, et rei publicæ communi sponsione *authoritate Principis præcedente*, juste fuerit definitum.”

It was usual in old times for the persons present at certain transactions, to be named in the documents of them as *consentors*, although they were in fact merely witnesses: such was particularly the practice in drawing charters and deeds respecting lands, that were executed in county courts, and in courts baron, where the suitors attending were taken as consentors. Hence it appears, that the use and meaning of this word was materially different from the sense now attached to it; and when the close analogy between the original Court of the King, and the Court Baron of subjects, is considered, it seems highly probable that the barons, who were proper suitors in the King's Court, were mentioned as consentors to the transactions there, in a similar manner as was practised in the inferior court, to which it probably gave the example. This custom is said to have prevailed to the time of Edward I.—*Gurdon's Hist. of Courts Baron*, &c. vol. ii. p. 590.

Mr. Ruffhead, in his Preface to the Statutes, after noticing how long it was before the assent of the Commons was held essential to the enacting of laws, says, “Even the barons themselves were, for some time, considered merely as *counsellors*, and, aspiring also to the honours of the chase, with the romantic glory of chivalry, they were glad to be relieved from the speculative business of legislation, which they willingly committed to the King and his Judges.” This is accompanied by a note, citing the 10th of Edward II. as an instance of the exercise of this prerogative, adding, “That laws in these early times were made by the sole authority of the King, without the concurrence of any other legislative branch, is farther



fairly looked to, and when the question is candidly considered, it will, I think, be impossible to suppose that they were otherwise enacted or enforced than by arbitrary authority.

It has been alleged, that in tracing the origin of Parliaments, the Court of the King has been confounded with that of the nation, upon a misunderstanding of the spirit of the feudal law †. This suggestion seems itself founded on an erroneous view of the points it embraces. In deducing the state of Parliament from the feudal system, there can be no such mistake as this; there certainly existed no other *national* court or assem-

evident from the *Miroir des Justices* \*, the author of which complains, that ordinances are only made by the King and his clerks, and by aliens and others, who dare not contradict the King, but study to please him. Whence, he concludes, laws are oftener dictated by will, than founded on right."

It is also observed respecting this old book, the *Miroir*, that it often notices defects in the Great Charter, and has a chapter on that particular head.—*Barrington on the Statutes*. It would hardly have been deemed irrelevant to his subject, if the learned author had cited the principal remarks that were then suggested upon this great constitutional monument.

† Stuart on the Antiquity of the English Constitution.

\* A book supposed to be written temp Edw. I or Edw. II. It may be added, that the author of the *Miroir* states, that he has read a great many, if not all the Saxon law-books, since the reign of King Arthur, which are now lost; but the ancient Constitution suppressed by the Conqueror has not been brought forward by any of the authors who have investigated the subject.—*Nicholson's Historical Library*.



bly under that system than the Court of the King, “*ex more,*” at the three state festivals, or at such other times as the Kings thought fit to summon them\* ; the same description of persons being called in both cases. Whatever may be said of the Wittena-gemote ; in tracing from the feudal institutions, I apprehend there is certainly no incorrectness in stating that the Magnum Concilium was at first the King’s Court-baron, composed of his tenants *in capite*, and that there was no other similar assembly. The Prince was there what the barons were in their courts, and vice versa. Judge Blackstone, in his chapter on the feudal system, says, “ The lord was, in early times, the *legislator* and *judge* over all his feudatories ; and therefore the vassals of the inferior lords were bound by their fealty to attend their domestic courts-baron (which were instituted in every manor or barony for doing speedy and effectual justice to all the tenants), in order as well to answer such complaints as might be alleged against themselves, as to form a jury or homage for the trial of their fellow-tenants ; and upon this account, in all the feudal institutions both here and on the Continent, they are distinguished by the appellation of the peers of the court ; *pares curtis*, or *pares curiæ*. In like manner the barons themselves, or lords of inferior districts, were denomi-

\* Cottoni Posthuma.



nated peers of the King's Court, and were bound to attend him upon summons, to hear causes of greater consequence in the King's presence, and under the direction of his grand justiciary, till in many countries the power of that officer was broken," &c.

Here is a distinct and correct account of *legislation* and *the administration of justice* in the early Anglo-Norman period; and from hence we may readily infer the general political condition of the King, the barons, and their inferiors. In other respects it seems almost uniformly agreed, that the barons were in general tyrants to their vassals, particularly when they had obtained King John's Charter, and long afterwards \*: thus the authority for legislation, the distribution of common justice, the general condition of the mass of the people, the power of the nobles, and, ultimately, of the King, may be respectively appreciated.

Much might be said upon the subject of the legislative authority. That the concurrence of the *Commune Concilium* was used on solemn occasions, but that the Kings did as often enact laws by their own power, which were never questioned, either in their general execution or in the next

\* Barrington on the Statutes, p. 48. Cottani Posthuma, p. 19 of the Reign of Henry III.



ensuing meeting of the Concilium, are facts, I conceive, equally undeniable: Kings likewise abrogated, of their own authority, laws which had before received the general sanction. And notwithstanding many authors, both on law and history, hold an assent to have been necessary, yet I have not observed any of them, that do not also convey somewhere in their narratives or reflections, distinct notices of a contrary practice\*. If, however, it were true that the Commune Concilium ought to have united in the legislative authority, how did it happen, when the many oppressions produced by its negligence of that duty are considered; when King John was reduced to the utmost extremity,—when his successor, a child, came to the throne under circumstances of great difficulty,—when afterwards, by his extreme unsuitness for government, he reduced himself completely into the power of his discontented subjects; how could it happen that on these occasions, so well suited to the purpose, no provision for the due exercise of the constitutional legislative authority was made? If the barons, or any description of subjects, felt themselves aggrieved by such and so many direful oppressions as were justly complained of, and which might be imputed to the suppression of the constitutional share of power to which

\* Reeves's History of the Law. Spelm. Gloss. voce *Judicium Dei*. Ruffhead, Preface to Statutes. Berington, History Henry II. Statutes at large.



they could say they were of old and true right entitled; How can the total omission of any remedy for so great an abuse be accounted for?

Will it be imputed, as hath been already mentioned, to selfish principles and tyrannical habits in the barons? The barons of those days have been extolled as highly patriotic and generous: their labours, their battles, their blood shed, are sometimes most extravagantly praised; it is not my wish to detract from their real merits, but it appears to me that if there was, *even in those days*, any trace of ancient liberty, they almost totally disregarded the recovery of it, and left untouched the true source of the evils that afflicted the country.

The solemn engagements always entered into, by Princes upon formally assuming the high functions of their station, as they bear direct reference to the principal objects desired in their government, may consequently be expected to throw considerable light upon the nature of that government. The coronation-oath established by the Legislature at the accession of William III. proclaims that this government shall be administered “*according to the statutes in Parliament agreed on, and the laws and customs of the same*.” This



declaration forms a distinct and plain account of the Constitution, better than any detail could furnish. What the oath on similar occasions was in the time, of which I have been treating, namely, prior to Edward I. is sufficiently agreed upon by historians.

That used by William the Conqueror appears to have been the same that he had taken on his inauguration as Duke of Normandy, and what had been usual here before the Conquest; it was in substance, *to prohibit all injustice and oppression, and to enjoin "the observance of equity and mercy in judgments."* According to other authorities, *"to govern prudently and justly; to ordain and keep right law \*."* To this effect, generally, continued the coronation-oaths till the time of Edward II. when a temporary alteration was introduced.

Upon this subject I am again constrained to differ from an authority which, on points of this nature, is not generally doubted. Sir W. Blackstone, after reciting the present oath, adds in substance, that the principal articles of it are as ancient as the time of Henry III. but that the

\* Mr. Carte says, that this oath was similar to what was used in France till his time. Hence we see what sort of government could be carried on under such a coronation-oath.



wording of it was changed at the Revolution, and he subjoins “ *a copy of the old coronation-oath* \*.”

The learned Judge refers to Bracton on this subject ; I have not had access to that authority, but find it quoted elsewhere as describing the oath in his age ; i. e. temp. Hen. III. and before, in terms † which do not agree with what Blackstone gives, and contain no reference to any particular

\* Vol. i. p. 235, as follows : *Que il gardera et meintenera lez droitez et lez franchisez de seynt esglise grauntez auncienment dez droitez Roys Christiens d’Engleterre, et quil gardera toutes sez terrez honoures et dignitez droiturelx et franks del coron du roialme d’Engleterre en tout maner dentiere sanz nul maner damenuement, et lez droitez dispergez dilapidez ou perdus de la Corone a soun poiar reappeller en launcien estate, et quil guera le peas de seynt esglise et al clergie et al people de bon accorde, et quil face faire en toutes sez jugementz owel et droit justice oue discretion et misericorde, et quil grauntera a tenure lez leyes et custumes du roialme, et a soun poiar lez face garder et affirmer, que lez gentes du people avont faitez et esliez, et les malveys leyz et custumes de tout oustera, et ferme peas et establie al people de soun roialme en ceo garde esgardera a soun poiar ; come Dieu luy aide.*

† Debet enim [Rex] in coronatione sua nomine Jesu Christi hæc tria promittere populo sibi subdito: Imprimis, se esse *præcepturum*, et pro viribus opem impensurum ut omni populo Christiano vera pax omni suo tempore observetur. 2. Ut rapacitates et omnes iniquitates *interdicat*. 3. Ut in omnibus judiciis æquitatem *præciuat*, et misericordiam, ut indulgeat ei suam misericordiam clemens Deus.”—*Tyrrell, Bib. Pol. p. 513, edition 1718.*



legislative power; which according to our common historians is not to be found until the coronation of Edward II. The oath then taken is preserved\*, but, like many of the ancient documents, contains expressions not readily understood in their true sense; we derive, however, peculiar help to a right explanation of some of them, from a circumstance that will appear at the present time somewhat singular. The education, even of our princes, in those days seems not to have extended always to Latin, although that language was very much in use in the compositions of the time, in the Church, and in the Courts of Justice. A form of coronation-oath was therefore provided in the common language used by the superior orders, “*si Rex non fuerit litteratus;*” but, “*si littera-*

\* It runs thus, in the form of interrogatory :

“*Si leges et consuetudines, ab antiquis justis et Deo devotis Regibus plebi Anglorum concessas, cum sacramenti confirmatione eidem plebi concedere et servare volueris : et presertim leges et consuetudines et libertates a glorioso Rege Edwardo clero populoque concessas ?*

“*Servabis ecclesie Dei, cleroque et populo, pacem ex integro et concordiam in Deo secundum vires tuas ?*

“*Facies fieri in omnibus judiciis tuis equam et rectam justiciam, et discrecionem, in misericordia et veritate, secundum vires tuas ?*

“*Concedis justas leges et consuetudines esse tenendas, et promittes per te eas esse protegendas, et ad honorem Dei corroborandas, quas vulgus eligerit, secundum vires tuas ?*”—  
*Report on Records, printed by order of the House of Lords. 10th of June 1807, Appendix, No. 16.*



*tus fuerit*," the language I have quoted was adopted. It appears probable that Edward II. was "*non litteratus*," as Brady \* quotes the oath from the *Clause Roll*, as taken by him, in the dialect so appropriated, the old Norman French; and from this additional context we are enabled to explain the true meaning of expressions which might otherwise readily have been misunderstood. The barbarous diction of that age was engrafted even on the Latin language; hence the advantage of its dead and unvarying quality was lost in the admixture of a temporary idiom and etymology. In the French form of the oath, the expression "*vulgus eligerit*" is rendered "*la communalte de votre realme aura eslutz †*." And the meaning of this "commonalty of the kingdom" is satisfactorily explained by Dr. Brady ‡ to have been the commonalty of all the superior orders of the kingdom. The "*leges et consuetudines*" may perhaps be the same that are mentioned in the beginning of the oath, as what had been granted by former Kings, and particularly by Edward, his predecessor. Hence the laws in question are ascertained, except what may, in a prospective sense, be meant by "*eligerit*," or "*aura eslutz*." But to this expression, which points so much to a deliberative sanction, the

\* Answer to Petyt, p. 75.

† Report, ut supra.

‡ In abundance of instances, and particularly in Glossary, p. 34.



practice of that reign does not appear to have been at all conformable; and Brady says the oath was different from what had been ever taken before, or perhaps since. If the known features of the government as to legislation had corresponded with the concluding part of this oath, it would show a much earlier approach to our present Constitution than was in fact then attained. But this appears to be one of the many occasions in those ages, when the diction found in our records is not to be explained without great attention to the relative practice of the time; for, notwithstanding the change in the oath, the statutes of Edward II.'s reign were not, either in form or in fact, enacted by any unusual popular participation in the legislative power. In the articles exhibited preparatory to the deposition of that unhappy Prince, no charge is made of a breach of the oath in that respect, what is stated concerning it alludes only to his not extending his pardon in some cases where it had been expected: but had it been possible, according to the acceptation of the times, to have specified a charge on the important head of withholding any high right from the *Commonalty of the Realm*, it cannot well be supposed that it would have been overlooked. With respect to subsequent reigns, Mr. Tyrrell gives (as I take it nearly "in ipsissimis verbis") the oath of Richard II. in which the expressions commented upon do not occur, the terms of the preceding oaths being



nearly resumed. He adds, that that form is the more deserving of observation, as it is, with some small alterations, what has been administered to all succeeding sovereigns \*.

The authority quoted by Judge Blackstone is, perhaps, one of the earliest printed books in this country, and, undoubtedly, the first compilation of its kind, but not, perhaps, for these reasons the more accurate; and it seems upon the whole probable, that the coronation-oath he has handed down may have come into use about the time of Henry VI. but ought not, I apprehend, to be considered as that in use before Edward II.

The end I have in view is, to ascertain how far the Kings were by their oaths bound to be guided by a distinct legislative authority, whose sanctions would be indispensable to all regulations binding

Tyrrell says thus: "The oath the young King took before the Archbishop of Canterbury, and all the Bishops and Lords then present, was somewhat larger than that already mentioned by our historians, and consisted of these articles: first, *that he would permit the Church to enjoy all her liberties; that he would reverence her ministers, and maintain the true faith; that he would restrain violence, and all oppressions, in all sorts of men; that he would cause good laws to be every where observed, especially those of St. Edward, King and Confessor, and would also cause all evil laws or customs to be abrogated; lastly, that he would be no respecter of persons, but would give right judgment between man and man; and would chiefly observe mercy in all his decrees or judgments, as God shall show mercy to him.*"—Tyrrell, vol. ii. p. 820



in the government, or, in other words, to all laws. And it appears sufficiently clear, that during the period under consideration, there was no provision that could practically restrain the Kings from enforcing regulations, notwithstanding they might not be sanctioned with the assent of the Commune Concilium. In subsequent times, when many points in the government came to be fully understood through practice, although not specifically recorded, the constitutional necessity that all laws should have the sanction of Parliament, became obligatory on the Monarch, before the coronation-oath was so properly fixed as it now is ; but in the early stages of a Constitution which has been gradually adjusted, upon emergencies and various occasions, it seems not improbable, that Princes or their advisers may have drawn an inference favourable to their authority, from the silence of the coronation-oath as to restriction, which they might consider as conclusive in regard to control on their conduct.

Before I proceed to state the beginning of the representation of towns, it may be proper to take notice of two arguments that have been used by some, who contend for an earlier existence of it than is otherwise to be found. One, grounded upon an alleged loss of records, supposes a probability, that as the first writs now existing do not mention the sending of deputies as a new thing, therefore it may be presumed, that if all preced-



ing records were found, there would appear other instances<sup>1</sup> of the like, perhaps, up to a much more remote period. I am, however, satisfied that there is enough of novelty marked in the measure as we see it, to prove that its beginning cannot be supposed at a period materially distant from what appears. If an unsettled form of writ, an unsettled manner of addressing it, an unsettled number of representatives, and an unsettled rule as to what towns should be represented, do not show that the thing was new and in its commencement, there can hardly be any stronger proof given, unless it could be supposed that it was consistent with practice in similar cases, to say in public documents that the like had not been done before ; and this, I apprehend, cannot be alleged. The first writs were directed to certain persons in the towns ; afterwards, similar writs were directed to the sheriffs, yet no reason is given for that difference, nor any allusion made to the preceding writs, in other forms. No argument, indeed, can be raised on such ground ; and with respect to the loss of records, we are not certain that any are lost which materially affect the question. Bishop Nicholson says \*, that he had seen the indenture transferring the records in the Tower from one keeper to another in 9 Richard II. in which there was a calendar of all the rolls then

\* Preface to Historical Library.



in being, and that it agreed pretty exactly with the calendars of his time ; whence it seems clear that no loss had happened under that reign, as some have thought. We have, besides, rolls of writs for Parliament, during the reign of John and Henry III. which are only found addressed to barons and ecclesiastical persons \*.

The other arguments to prove a very early representation of towns, have been on two very extraordinary petitions, presented by the borough of St. Albans to Edward II. and by Barnstaple to his successor. From some loose expressions in these documents, it is pretended, that representatives must have been sent to Parliaments before the reign of Henry III. But each of these petitions contained so much falsehood, that nothing can with propriety be allowed to be established upon their allegations ; it will be sufficient to refer to what Mr. Hume has said of the former, in terms rather too mild for its demerits. With regard to the petition from Barnstaple, it may not only be doubted whether it contended for the early representation supposed ; but it is, besides, liable to greater objection than the other, on the score of untrue assertion, and of undue

\* There are also writs in the latter reign for knights, which will be noticed hereafter. The clause rolls which contain such writs seem to be extant in the Tower from the sixth of John.—*Rep. on Pub. Records*, p. 53.



means used to procure a false return to the inquisition ordered on its claims. It is, besides, not to be conceived, that these two places *only* should lay claims to ancient privileges, when so many others of more note and likelihood to have been thus favoured (if favour or privilege it was), were silent as to such pretensions \*

\* The particulars of these claims are fully noticed by Lord Lyttelton in his History of Henry II. and in Willis's Not. Parl. A great part of the arguments upon the St. Alban's petition is directed against a doctrine maintained by Dr. Brady, that no towns were originally represented, but such as held of the King *in capite*; which they disprove; yet, it seems true, that all those who so held, were called on to send deputies. That the two towns in question sent members immediately after their petitions, will by no means prove the antiquity of the privilege, which Lord Lyttelton and Mr. Tyrrell contend for. Representation was not then generally desired, but the contrary; and these are the only instances in that age of its being solicited by petition, or otherwise; while many places that had writs, avoided making returns. The St. Alban's petition appears to have arisen from a dispute with the Abbot, of which all the objects are not, perhaps, to be discovered; and as to that of Barnstaple, which was presented about the fourteenth of Edward III. it is sufficiently clear, that representation was no principal object, but probably thrown, *in cumulo*, with the other claims. This is suggested, because the town had been represented uninterruptedly from the twenty-third of Edward I. and because, in the return to the second inquisition, (which was solicited by the townsmen when they found that upon the first unfavourable,) the right to send burgesses to Parliament is not mentioned; and yet this is the return which they used undue means to procure, and which was, in a great mea-



It might seem unnecessary to occupy more time in controverting the various opinions and arguments for very early representation; but it is surprising to observe what pains and endeavours have been used to establish a point, which, in fact, when well considered, is of no use to us in regard to our present system.

Lord Lyttelton, in rejecting the effect of the clause in King John's charter, which seems now universally admitted to be conclusive as to the

sure, finally set aside. Barnstable claimed a right to be represented, by virtue of a charter from King Athelstan, which they pretended was lost.

Charters, soon after the Conquest, were often forged. Rapa seems to impute the deception to those only which are found in Latin, and although that criterion may not be universally safe, as Mr Turner (*History of the Anglo-Saxons*) tells us, that language was understood by them, and used, in some degree, in deeds; yet, that many were forged, appears from other authorities.—*See the first preface to the Harleian Catalogue, 1808.* The book under the title "*Modus tenendi Parliamentum Temporibus R. Edwardi, Filii Ethelredi, &c.*" which deceived Sir Edward Coke, is another instance of the forgeries practised with respect to Parliament, before the Conquest.—*See also Mr. Hume's Note on the Reign of the Conqueror, and Dr. Brady.* There are then weighty objections to proofs of that description not otherwise corroborated. In later times, the many spurious copies of the Great Charter, show also the facility and frequency of such deception.—*See Blackstone's Introduction to the History of Charters, and Nicholson's Hist. Eng. Library, as before quoted.*



members of the Commune Concilium, asks, how does it appear that it was intended to enumerate *all* the members?—*all* entitled to sit there? If there was no “dispute about the method of summoning the representatives of counties, cities, and boroughs,” there was no need of mentioning them in the clause, which is not (he says) “the description of a Parliament, or Common Council,” but a declaration in what manner, “and by what kind of summons, *certain members* thereof, viz. those who held of the King, should be called to the Parliament for the imposing of scutage, or other aids\*.”

In answer to this argument, I shall make only two short remarks: first, that his Lordship’s reasoning *supposes* what he means to prove, namely, that *representatives* for *counties* and towns had an acknowledged right to sit in what he calls the Parliament,—that the method of their summons was a settled thing, about which there was no dispute,—and that the *only matter in doubt*, and which *required fixing*, was, the *summoning and sitting of the King’s tenants in chief*. \* All this Lord Lyttelton supposes, but does not prove. Secondly, I would ask, whether, if the King summoned the parties mentioned in the clause, and *none else*, agreeably to the manner specified,

\* Lyttelton, vol. iii. p. 401.



they might not proceed constitutionally to impose taxes \*?—Unquestionably they might. A very slight acquaintance with the history of that age, and a single reading of the clause in question, will inform any person sufficiently on the subject at once; indeed if a casual reader did not happen to go farther into this author's elaborate compilation, he might, perhaps, remain under an impression too unfavourable to his Lordship's talents.

One observation more seems necessary before I proceed to notice the first writs and their objects. It is a very important circumstance in our early history, and not unconnected with the popular appeals, or rather assertions, respecting

\* The clause alluded to runs thus: "And to have a common council of the kingdom, to assess an aid, otherwise than in the three foresaid cases, or to assess a scutage, we will cause to be summoned the archbishops, bishops, earls, and greater barons, personally, (*sigillatim*) by our letters; and, besides, we will cause to be summoned, in general, by our sheriffs and bailiffs, all those who hold of us in chief, to a certain day, (*scilicet*) at the distance of forty days at least, and to a certain place; and in all the letters of summons, we will express the cause of the summons; and the summons being thus made, the business shall go on at the day appointed, according to the advice of those who shall be present, although all who had been summoned have not come."—*Dr. Henry's Translation of Blackstone's Copy of King John's Charter, with the addition of the two words in italics, which are taken from Blackstone's transcript of the Charter, agreeing with the copy printed July 1800, by order of the House of Commons.*



the highly extolled conduct of our ancestors, the many deviations from their principles, and the great political degeneracy of the present state of the people and the Parliament; for, as these topics, among many others, are largely used by our present reformers, it cannot be deemed an impertinent addition, although it will certainly not prove a flattering compliment, to introduce a particular notice of the real situation of the lower orders of the community, previous to the rise of the popular branch of our Legislature. Considering the arguments which are not sparingly urged respecting the birth-rights of the lower orders, and *their present depressed condition*; considering also the reasoning, in some respects differently directed, which means that the popular influence in the Legislature ought to be increased; these several circumstances, when connected, and held forth as grievances to be remedied, *not by measures of innovation, but upon the principles of the ancient, genuine Constitution*, render it proper to look truly into the ancient state of the people, in order to judge of the present degeneracy; and the old principles of the Constitution cannot be adequately estimated, without understanding well the general state of society at its most important periods.

The lowest, and the next ordinary class of natives of this kingdom, were, at the invasion of



William, in a state of slavery, not by any casual or temporary grievance in the government, but in settled system, not less than that unhappy description of human beings, whose deplorable condition in Africa and elsewhere, we now so much lament; their numbers were increased by the defeats of his opponents, and their fetters rivetted by the ferocious enmity of his followers; they either were before, or soon after became, as much matters of property, and were as saleable, with or without the soil on which they existed, and in or out of the kingdom, as in some of the countries just alluded to. At the period of Domesday-Book, there is no doubt that the number of persons in the servile state, far exceeded that of all other classes of the inhabitants\*. This will be readily conceived, when it is understood, that, in the former wretched condition, were comprehended all persons from the lowest sort of labourers up to such artisans in the country as carpenters, smiths, &c.; and in the line connected with land, up to the description of persons corresponding nearly with copyholders now†. In towns, the land was the demesne, and the inhabitants the vassals, either of the

\* Brady, General Preface to his History.

† Dr. Henry's History, and Sir T. Smith's Commonwealth of England. The soccage tenants were very few.



King, or of some baron, by grant from the King. From the circumstances of the times, it was absolutely necessary for them to be under the protection of some powerful person; and if all these were not in perfect bondage, they were in a state not far removed from it. The noble author to whom I had lately occasion to refer, in noticing this important circumstance, makes an animated and eloquent animadversion upon the extreme insufficiency of a political system, that admitted the existence of a degradation so repugnant to its most essential object. He says, “ Surely, whatsoever dishonours human nature, dishonours the policy of a government which permits it; and a free state, which does not communicate the natural right of liberty to all its subjects, who have not deserved by their crimes to lose it, hardly seems to be worthy of that honorable name \*.” The horrid consequences of such a policy to society in general can hardly be conceived; and the curiosity that might naturally and usefully be gratified in contemplating the ancient state of our predecessors, pauses in disgust, when the unnatural effects of such an inhuman system are more nearly observed.

It is, upon the whole, as clear as any fact of the sort, at such a distance of time, can be, that



all the baleful effects of bondage, for a long period, constituted the lot of the same class of society now industriously taught to believe that their old rights are withheld, and that thereby all the grievances pointed out to them are occasioned \*.

\* Dr. Henry informs us, that when any person had more children than he could maintain, or more domestic slaves than he chose to keep, he sold them to a merchant, who again disposed of them, *either at home or abroad, as he found most profitable!*—(Vol. vi. p. 267.)

There seems, in all ages, to have existed a great difference of condition among mankind, and some degree of constraint on the lowest orders has been always requisite for the necessary purposes of every stage of society. Thus the tillage of the ground, appears to have been one of the original causes of slavery, we find it in this island in the earliest ages; and the slaves were obliged to cultivate the soil, being held in that condition for this necessary purpose. A proposition of them were, "*agri censiti*," "*ascriptitii glebæ*." Another proposition, however, was, as has been above observed, so far liable to individual sale, as to be absolutely an article of trade; and the shocking barbarity of the practice seems never to have been noticed by the civil legislature. But the hierarchy, in early times, made many regulations, of which the objects are now removed out of their province. An ecclesiastical council attempted, anno 1102, to stop the most odious part of the shocking traffic, the public sale of slaves. But the prohibition being without a penalty, does not appear to have been effectual; and in the end of that century, the Archbishop of Canterbury paid ten slaves as part of the price of the manor of Lambeth, to the Prior of Rochester.—*Rym. Fædera, apud M<sup>r</sup>Pherson, Hist. of Commerce, anno 1189.*



Some authors have ascribed to the feudal government a beautiful connecting system of society, founded, as it were, on gratitude for

In later times, the part taken by the clergy in discountenancing slavery, is not much more creditable to an enlightened practice of Christianity. When the system had come to its decline, and the reformation in religion began to awaken the slumbering sense and understanding of man, they were still slow and unwilling instruments in that cause, so interesting to humanity.—(*Sir Thomas Smith's Commonwealth*, p. 137.) We seem, indeed, indebted to the unseen dispensations of Providence for a much larger share of improvement, than we are willing to own. The usage of slavery was, I apprehend, at no very distant period, acknowledged in our common law. Sir Edward Coke mentioned it so in a legal argument, anno 1628, and incidentally showed some of the causes for which villains might be imprisoned in the time of Edward III. The reference also shows, in some degree, to what sort of persons that condition then extended; he quoted from an old year-book, that, “a prior had commanded one to imprison his villain, the judges were ready to bail him, till the prior gave his reason, that he had refused to be bailiff of his manors.”—(*Rushworth's Hist. Collections*, vol. i. p. 533.) It was also afterwards allowed in an argument before the House of Lords by Sir R. Cotton, “that the general law of the land doth allow their lords to imprison them (villaines) at their pleasure without cause.”—(*Cottoni Posthuma*, anno 1651.) Bondage seems to have been gradually removed from persons to property (if I may use the expression), in the case of the class of slaves first mentioned; whoever held the land, was bound to perform the service, (by labourers,) or forfeit the land, which no other could obtain but under the like obligation.—(*Sir T. Smith's Commonwealth of England*.) Villaintenures merged into copyholds, first at the will of the lords, and afterwards restrained to the custom of the manor, and when manu-



bounty, and obedience for protection ; such, indeed, was the basis of the fabric, and on that foundation the structure was devised on some of the best propensities of the human mind ; but the first principles of the system were completely contrary to the modern idea of liberty. This idea had its rise and accomplishment, by the introduction and in the progress of a popular branch in the Legislature : the beginning was almost imperceptible, and its progress slow. It was, in fact, one of the faults of the feudal system, that its connecting points were too distant ; and whatever may be said of its tendencies to high military spirit, and a love of freedom, there was in its few degrees of rank, a principle of rapid degradation, terminating in the unnatural debasement just mentioned, which was evidently calculated to obstruct the approaches to freedom ; and smother all feelings of liberty in an habitual submission to arbitrary superiority. Its most distinct tendency was, perhaps, to arbitrary monarchy, or to an arbitrary aristocracy, both equally unfavourable to the liberty of the great mass of the people. In most reigns, the general circumstances of the times influenced in a great degree the turn of affairs ; but in the period

mission became frequent, it appears to have been necessary to compel the labour of the lower orders, and then statutes respecting labourers were enacted.



of which we have hitherto treated, and for ~~no~~ inconsiderable time after, the power of the feudal sovereign was such, that with ordinary talents, or with superior abilities, he could balance, or guide to his pleasure, the political weight of the nobles; but if the Prince happened to be of a character unsuited to his station, the aristocracy seldom failed in showing strong marks of the power of their order.

Lord Lyttelton, upon the authority of Sir Thomas Craig, places the maturity of the feudal system in Europe, from a little before the Conquest to beyond the times of which he wrote \*: in that, however, he seems to allude principally to its effect with regard to property, of which an extension of the rules of inheritance was then taking place; yet its influence, on the general state of society was not to be supposed weakened, but rather confirmed and enlarged; for although a more distant relation was allowed to succeed, yet he took the inheritance on the very same conditions as before. It was then under this system, which after a long period of operation and refinement according to its manner was firmly and universally established, that the first call of deputies from towns appears; and about the same time, measures somewhat similar were

\* Reign of Henry II. ending anno 1189.



adopted with regard to the lesser landholders, although the purpose of their attendance might not be at first entirely of the same nature, inasmuch as the weight and settled consideration attached to the possession of land, was then superior to any title or right that the inhabitants of towns could have. It was, perhaps, under the impression of this known distinction, that an hypothesis has been assumed, that towns forming corporations, and endowed with land, had a title to send deputies to the great Councils \*.

The beginning of corporations in England is pretty well ascertained not to have been before the reign of Stephen. Dr. Brady, indeed, supposes, that some immunities may have been granted sooner. Under Henry II. the practice increased, and in the time of King John, many towns had customs of tolls, passage, pontage, lastage, and stallage, granted to them in consideration of certain annual payments to be made to the King †; but there is little appearance of

\* Dr. Gilbert Stuart composed an elaborate tract, intended, among other points, to prove, that there were knights of shires and burgesses from corporations, in the Saxon Councils.—*Hist. Dissert. on the Antiquity of the English Government.*

† The beginning of such things can seldom be well ascertained. Some immunity or privilege might be given to a town, for the exercise of which, it might be empowered to choose, or might of necessity appoint some person or persons from



their being made possessors of land for a long time after; and, perhaps, many never did possess land of the King *in capite*.

I have been induced to dwell longer than might seem requisite on the state of our Constitution from the Conquest to the period when representation began to appear, in order to give a practical view of the general situation of the people and government previous to that important æra. Differing from some of the received statements of the principal occurrences and usages of that age, it seemed preferable even to risk the possible, and, perhaps only temporary disapprobation of the more eager class of readers, than either to sacrifice what seems the most just view of our na-

among its principal inhabitants. This might happen early, and there might be many intermediate additions and improvements, before it arrived at the state of a perfect corporation. The city of London appears to have enjoyed some privileges before the Conquest: the Conqueror confirmed or extended them in some small degree; it afterwards had a Portgeref appointed by the Crown: then a Mayor. Afterwards, under Henry III. anno 1224, a common seal was conferred on them *Communitie*. —Stowe, *apud* M'Pherson's *Annals of Commerce*, sub anno 1224, and Andrews's *Hist. Government*, from 1066 to 1217.

It seems probable that this subject might be much illustrated, and, perhaps, placed beyond doubt, by an examination of the patent and charter rolls, which are preserved in the Tower: the former from the third of John, 1201, and the latter from the first, or 1199.—See *Report on Public Records*, p. 53.



tional condition, or to offer unexplained or unsupported dissent from authorities which appear to have been sanctioned by habitual approbation. My pages have been thus insensibly multiplied on preliminary matter, but certainly not unconnected with a comprehensive understanding of the true state of our rights and customs in the ages preceding that, when, I conceive, the House of Commons took its rise.

We come now, at length, to the period when the necessities of the Crown produced the first approaches to deputation from the people. It was not, however, by any inherent title of their own that towns sent deputies; but when the pecuniary necessities of the Crown were urgent, and their inhabitants appeared capable of contributing materially to the wants of the Exchequer, they were required to send some of their inhabitants or burgesses, in order to facilitate the assessments, instead of the preceding practice of imposing them separately by the King's justices in their *iters*, which was less convenient.

Notwithstanding it had been established by law, as well as any thing in which the reigning Prince was a party could be, that the proper demesnes of the Crown should not be alienated, yet the boundless prodigality of some Kings, the rapacity of many ministers, the claims of powerful partizans on occasions of undue successions, together with a general misconduct in the collection of the re-



venue, diminished, in a surprising degree, the income of the Crown after the Conquest. Sir John Sinclair, in his History of the Revenue, states the reduction to be, from 400,000*l.* under the Conqueror, to 100,000*l.* under John, and to 80,000*l.* under Henry III. Other authorities make the last sum only 40,000*l.* \*, which, from the general circumstances of the reign, is rather the most probable amount. It is then under such a change, from the independence of the government, that we find the towns are applied to separately, by letters or writs, for pecuniary aid. The first occurrence of this kind is in the fifteenth of King John, when he was engaged abroad in war, and had particular occasion for a supply, which is completely explained by Dr. Brady †. He then directed letters to the following towns, viz.

To the Mayor and Barons of London.

To the Mayor and good men of Winchester.

To the good men of Northampton,

Lincoln,	Gloucester,
York,	Canterbury ;
Oxford,	

and to the following, under the denomination of Burghs, viz.

\* Sir J. Sinclair and Carte.

† Answer to Petyt, p. 43.



Hereford,  
Exeter,  
Worcester,

Cambridge and  
Huntingdon,  
Bristol  
and Norwich.

The writs distinctly express the object, as follows: "*And we earnestly require you, that, according to what the same Bishop*" (the Bishop of Winchester, the prime minister of the time, who had been before mentioned) "*shall give you to understand, you effectually apply yourselves to give us a subsidy, toward the relaxation of the interdict, so that we may worthily commend your kindness, knowing that what you shall give, or lend, or do for us, upon this occasion, shall be fully repaid with thanks. Witness ourself at Rochell, &c.\**"

It must be unnecessary to make any remark on the nature of this document, as the intention of the application to these towns is clear, and it seems an inference tolerably probable, that they were then the places of the greatest wealth and consideration.

In the time of Henry III. there were various assemblies, under the designation of "Concilium," as had been usual before; the term "Colloquium" was likewise applied, and another expression, "Parliamentum," new in this sense,

\* Brady, ut supra, p. 40.



came into use, not in consequence of any change in the nature of that assembly, but in an adventitious manner, which it is both impracticable and unnecessary to account for \*. The writ of the thirty-eighth of this reign to the Sheriff of Bedford and Buckingham shires, is the next public document, which shows the necessitous state of the Exchequer, and the consequently unusual measures resorted to

\* Carte, vol. ii. p. 241. This term had before been used hardly otherwise than by ecclesiastics, and the following remarkable notice of the sense they attached to it, together with Mr. Carte's observations, seem to give the most probable account of its origin. Among the *Statuta Abbatum nigri Ordinis*, anno 1095, it is said, "Et cum quidam post prandium proniores sunt ad loquendum quod non prodest, quam quod ædificat audientes, ad ampliandum cultum justitiæ qui in silentio reperitur, statutum est, quod *Parliamentum* quod post prandium in quibusdam claustris fieri consuevit, penitus interdicitur." This occurs in *Mat. Paris, Addimenta*.

It seems to have been accidentally taken as a convertible term for Colloquium and Concilium, and is said to have been first used in a writ, in the twenty-eighth of Henry III. when it is applied to the celebrated assembly at Runnymede. It is first used by M. Paris, in the sense now adverted to, in speaking of the meeting, anno 1245, which he calls a "*Parliamentum generalissimum totius regni Anglicana totalis nobilitas, videlicet, prelatorum tam abbatum, et priorum quam episcoporum, comitum quoque et baronum.*"

The term did not immediately supplant the others that had been used before; for in the summons of the twenty-third of Edward I. the words are "Colloquium et tractatum," and the indorsement or title on the Clause Roll, seems to be "*De Parlamento tenendo.*"—*Bracton on Boroughs*, p. 54.



for the purpose of obtaining supplies. It is unnecessary to notice the arguments raised to prove an instance of county representation upon this occasion, as it is obviously nothing else than an attempt to obtain a supply from the lesser order of landholders, by means of deputies from the counties, after the usual application had failed. The Sheriff is instructed to explain the King's necessities, *and effectually to induce the knights he was to cause to be sent before the Council to promote a competent aid.* A like writ was at the same time sent to the Archbishops and Bishops to summon before them the members of the Church, in order to prevail on them also to make a voluntary contribution \*.

On various occasions in this reign, knights were called upon from the counties, but the many differences in the manner of doing it evidently prove it to be a new expedient, occasioned by the want of money, and the imbecile character of the King. The choosing of two knights in the fourth of the reign, to collect a tax †, seems also a prelude to others of that description being called upon, and employed in a body, for the purpose of facilitating similar objects afterwards. There were, on different occasions, one, two, three,

\* Brady, *Animadversions on Jani Anglorum Facies nova*, p. 212.

† Tyrrell, vol. iii. Appendix, p. 13.



and four, summoned \*. In the forty-ninth of Henry III. we find the famous Parliament, summoned, in fact, by the Earl of Leicester, who held the King and kingdom in his power. There is every reason to believe that it is the first occasion on which representatives from towns were called. The irregularity of the whole proceeding is evident from the details and documents carefully exhibited by Dr. Brady.† The persons summoned, were twenty-three barons, all of the rebellious party, and who were in arms against the King, one archbishop and eleven bishops; one hundred and seven inferior ecclesiastics, two knights from each county, four persons from each of the Cinque Ports, and two citizens or burgesses from "York, Lincoln, and the other boroughs of England;‡" these were *not to be elected*, but *the sheriffs were to cause them to come*. It is chiefly to be remarked of this assembly, that the members of the superior order were all the known friends of Leicester, and not one half of them entitled to sit; that he was in particular favour with the clergy, of whom three-fourths of the number summoned did not hold so as to be entitled to sit, and never had sat in Parliaments; finally, the sheriffs were of his appointment, and

\* Whitelock on Parliamentary Writ, vol. i. p. 438. Brady, Answer to Petyt, p. 140. Brady, Appendix to vol. ii. of History, passim.

† Brady, Answer to Petyt, p. 136.



they directed the returns from the counties. Little is known of the transactions of the meeting, nor can this successful rebel's policy on the occasion be discovered; he was soon after overthrown, and the King was re-established in the government.

As no constitutional right, or practice in representation, can be grounded upon this transaction, it is unnecessary to make it the subject of any farther remarks. On the restoration, as it may be said, of the King, a Parliament was called, but without any of the above-mentioned extraordinary members, who were never again summoned in that reign.

The period after the reign of Henry III. appears, for several reasons, the probable epoch of a change in many circumstances nearly connected with our present Constitution; and upon them and their natural consequences, have the foundations of the subsequent improvements been formed. The great reduction in the revenue of the Crown was an important change, which tended to add much weight to the national Council or Parliament; and the frequent distress and ill management of Henry made them sensible of it. They often refused him supplies, which, together with

\* Carte, vol. ii. p. 151, and 257. Brady, *ut supra*.



the want of resource on his part, and his unceasing prodigality, tended every way to weaken his authority. The second order of landholders had, in the natural course of things, been increased, and when that circumstance came to be conspicuous, it would naturally follow, that they must be consulted as to aids and supplies; hence, unquestionably the various calls of deputies from that order. It has been said, and with much appearance of probability, that after the battle of Evesham, a new policy was adopted in the summoning of Peers or Barons; it appears, indeed, that titular honours were in some degree in use in the early part of this reign\*, and a law is supposed to have been made, although now lost, restricting the appearance in Parliament to those persons only, to whom the King's writs should be directed; the more frequent summonses, also, of knights, or representatives from the counties, is a measure not unlikely to accompany such a deviation from former practice. Under Stephen, the division of great baronies in grants, came first into use. In the course of Henry II.'s reign, facility was given to alienations for the encouragement of crusaders; under Richard I. this cause operated still more powerfully; and in the time of John, it has been thought to be more systematically encouraged by one of the clauses of his

\* Selden, Titles of Honour, part ii. p. 59r.



charter. These circumstances, together with the unavoidable partition of property in the course of time, by the multiplication of the different branches of families, who must all, in some measure, appear in a style appropriate to their rank, must be conceived to have had considerable effect. Many of the barons were, besides, much reduced by the consequences of the battle of Evesham, and thereby the King could the more easily use his pleasure in calling only those he approved of. This policy was followed by Edward I. and continued variously, until, at last, the title to a seat in that chamber of the Legislature settled as it now rests, on the King's patent, and writ \*. There seems but little difference, whether a right descend by virtue of a patent, or any given description of property, under the denomination of honour, castle, or barony; but, when the title to sit by tenure came to be shaken, and governed by the additional sanction of a special writ of summons, which, in the beginning of the practice, was exercised *ad libitum Regis*, and sometimes *hac vice tantum* †,

\* Some few exceptions to this might remain, but they need not be noticed here.

† Brady. "Neglexit utique Edwardus I. multos quod vocaret Henry III. etiam filios plures, quorum ipse patres admisisset, aliis interim introductis. Sic antiqua illa *Baronum* dignitas, secessit sensim in titularem et arbitram, regioque tandem diplomate iudicio dispensata est."—*Spleman, Gloss. voce Baro.*

According to Domesday-Book, there were, towards the end



it will readily be perceived, that the Crown had thereby a very great command over an assembly so constituted. In other respects, the rules of descent of lands were gradually enlarged, while the limitation of remainders, in patents of honour, became an object of more distinct restriction in the respective grants.

The protection which trade acquired by the first privileges of towns, contributed to general improvement, by the diffusion of the various productions of the country, as well as the introduction of many conveniencies; hence, encouragement to commerce, and profit to those concerned in it would imperceptibly arise: and when finan-

of the Conqueror's reign, not quite seven hundred tenants in capite, great and small, exclusive of ecclesiastics; and about three hundred and fifty of these tenants were possessors of honours, or great baronies. In the time of King John, we know from his charter, that the difference in the consideration of the greater and lesser possessions rendered it expedient to declare a different manner of summoning them, the former being reckoned individually worthy of special writs from the King, while the latter were to be called only generally by the sheriff. In the time of Henry III. anno 1257, there were remaining about two hundred and fifty baronial tenures; yet the inferior subdivisions of properties had very probably increased much beyond the first appearance from that simple statement; an hundred baronies might be divided into a comparatively great number of small tenures in capite, and many of those two hundred and fifty remaining were probably reduced, which would still augment the number of small holdings.



cial difficulties were often felt, from the diminution of the proper revenue of the Crown, the inhabitants of towns would naturally become objects of taxation, and the more particularly, as about the same time the advantage of such privileges, under the circumstances of the period, came to be peculiarly felt and desired \*.

In the reign of Edward I. the calling of deputies from towns becomes an object of importance, as one of the purposes of this treatise is to show the origin of that occurrence, together with the causes and manner of it. The representation of counties seems materially different; we can trace to a very early period the privileges and superiority attached to the possession of land in a certain manner, while in the same age the number of persons so possessing it was evidently very small. We also find in the progress of time, that proprietors of this description increased much in number, while the extent of the respective possessions was proportionally diminished, for it necessarily so happened, as property came to be divided. There remained, however, a certain number of landholders whose possessions were still so considerable, as to preserve them in stations of very material and substantial superiority; it must follow that individuals thus very unequally circumstanced,

\* Cate, Edward I.



could not, personally and together, exercise the same rights without so great inconvenience as would naturally operate to remove the inferior persons from so unsuitable a conjunction; and as the property held in small quantities, when the number of people possessing it was much increased, formed in the aggregate a considerable proportion of the whole, it is easy and natural to conceive, that their rights would be exercised generally, and by deputation. In this manner, aided by the considerations mentioned before, I apprehend, arose county representation.

Much has been written on this subject by various authors; Mr. Hume's History contains several very apposite remarks, from which it is hardly possible reasonably to dissent; and that book being in every one's hands, it is unnecessary to enlarge on the matter here. The period when knights for shires were first summoned, is also rendered the less usefully interesting, when the manner and reason of the thing can be so obviously traced; the practice was doubtless established by degrees. We have seen that in the fifteenth of King John, the principal towns were applied to for an aid under a pressing exigency; and in the end of the same year, there is a writ for four knights from the county of Oxford, "*ad loquendum nobiscum de negotiis regni nostri.*" The several unsettled calls



of knights under his successor have been noticed, and ultimately the measure came into a more usual practice.

Before I proceed to state the first summonses for the deputies from towns, there is one very remarkable and authentic proof of the rank their inhabitants then held in society, which should not escape notice, and is very material to be remembered, in considering the probable cause or reason for their introduction into Parliament. In the twentieth Henry III. anno 1235, to prevent the disparagement of wards by unsuitable marriages, a law was made which runs thus, *And as touching Lords, which marry those that they have in ward to villains, or other, as burgesses, where they be disparaged, if any such, &c. the Lord shall lose the wardship unto the age of the heir \*.*"

Now the wards of a Lord could not be *tenants in capite*, but, in fact, below the lowest of that order; they were, however, of a degree that would receive disparagement by marriage with a burgess; what, then, must the rank and consideration of a burgess have been, when the marriage of persons of such condition with them, created so great disparagement, that it was necessary, by law and a considerable penalty, to guard against it?

\* Stat. of Merton, c. vi.



In investigating the histories and authorities of the times of Edward I. we find that authors differ as to the dates of many of the Parliaments then called; in what follows, however, every thing that seems well supported, and is material in regard to representation and its purposes in that period, will be stated \*.

In 1273, the first of Edward I. it is said that the guardians of the kingdom (in absence of the King) summoned a Parliament, in which were four knights from each county, and four deputies from each *city*: the object of the assembly was merely to take the oath to the King †. This meeting is somewhat doubtful, as it is not corroborated by historians in general ‡, who had the same authority before them as that on which it is above noticed. In 1275, a Parliament was held at Westminster, but no deputies from towns

\* There appear only two statutes in the reign of Henry III. that show the concurrence of any council, and such as is mentioned seems to have consisted only of peers and tenants *in capite*: that held at Marleberge, anno 1267, is stated to have been composed of *the more discreet men of the realm, as well of the higher, as of the lower estate*; which seems to correspond with the rule laid down in the charter of John.

† Tyrrell.

‡ This assembly is, indeed, sometimes mentioned as merely for the purpose of declaring the succession to the throne, Edward being at the time in Palestine, deeply engaged in the holy wars.



are mentioned any where; on this occasion the statute of Westminster first was enacted. Another Parliament is said to have been held this year, also without deputies from towns, and in which it is supposed some laws were made that are not printed \*, and a tax granted. The acts preserved are, by authority of *the King and his Council, with the assent of Archbishops, Bishops, Abbots, Priors, Earls, Barons, and the Commonalty † of the realm, being thither summoned, ‡*. In 1276, a Parliament was held, but no deputies are mentioned; several statutes were made, some of which are clearly enacted by authority of the King's Council §: a tax was granted.—In 1278, a Parliament was holden at Gloucester, where several laws were made, “*the more discreet men of the realm, as well of the high as of the low degree, being called thither.*” The greater and lesser barons or tenants *in capite* are, without doubt, here meant; but how the *lesser* came, whether

\* Tyrrell.

† This word is one, upon the sense of which, in those times, much difference of opinion has heretofore prevailed: it being contended by some, that it signified representatives for the Commons, or the smaller freeholders and inhabitants of towns; but Dr. Brady has proved, as has been observed before, that it meant only the community of those named, and that they were considered the community of the realm. And of this opinion is Mr. Hume, Appendix II. to History.

‡ See Statutes.

§ Stat. at large; 4 Edward I. Stat. 3.



individually, or by deputies, does not appear\*.— In 1279, we find a Parliament or Great Council, in which no deputies appear; in the principal law now enacted, the authority is stated to be, *the King, by the advice of his prelates, earls, and other liege men of his kingdom, being of his Council*†. In 1283, the 20th Jan. two extraordinary assemblies were called on the same day at different places. The sheriffs were required to cause to come before the King or his commissioners, all who were able to bear arms, and who had twenty pounds a year, and were not serving the King in the Welsh war; also *four knights from each county, with full powers from its community, and two men of every city, burgh, and mercate town, for the commons of the same, to hear and do the things which on his behalf he should cause to be shown unto them*‡. Those from the northward were to meet at York, and from the southward, at Northampton. From the preamble or beginning of the writ, it appears that the King was then intent on a complete conquest of Wales, which may account for one part of the summons. The clergy were summoned in a similar manner, but for the express purpose of giving an aid §: this indeed appears to have been also the object for assembling the laity, who

\* Ruffhead's Stat. at large; 4 Edward I. Stat. 3.

† Stat. of Mortmain.

‡ Tyrrell. Brady.

§ Brady.



granted extraordinary subsidies very readily \*. Of the towns summoned, or that were represented at these assemblies, no list seems to be extant: the writ on the occasion directs *no election*, the sheriffs being merely to *cause* the parties to appear.

The King, pleased with this experiment, which had produced the desired supplies, again summoned another assembly of deputies from towns; they sat at Acton-Burnell, in the month of October of the same year. For this the sheriffs were directed to cause two knights *to be chosen* for every county, and *similar writs* were directed to the Mayor and Sheriffs of London, the Mayors and citizens of Winchester, York, Exeter, Lincoln, Canterbury, and Carlisle; to the Mayors and Bailiffs of Newcastle-upon-Tyne, Bristol, Grimsby, and Lynn; to the Mayors and good men of Northampton, Yarmouth, Hereford, Chester, and Worcester; to the Bailiffs of Norwich, Nottingham, Scarborough, and Colchester; and to the Bailiffs and good men of Salop †. The object of this Assembly or Parliament, according to the writs to the nobility, was, that after conference

\* Carte, vol. ii. p. 257.

† It has been contended, because there appears a blank on the roll after the names of those places, that many more were summoned at this time; the conjecture may possibly be well founded, but no reliance is to be placed on it.



*had with them, the King intended to ordain what should be done with David Prince of Wales.* And according to the writs for counties and towns, the object was, to *speake with the King upon these and other things* \*. All that appears to have been done by the Commons at Acton Burnell †, was to agree upon an aid to the King, unless it might be petitioning for the statute “*de Mercatoribus*,” which was made there, and is entirely calculated for the benefit of traders; the enacting authority is “*The King by himself, and by his Council, hath ordained and established* ‡.”—Prince David was tried before the Peers at Shrewsbury, previous to the meeting at Acton Burnell.

In 1285, one Parliament at least was held, but there is no mention of deputies; many laws were made, and the authority appears to be the “*King in his Parliament provides, and hath ordained*,” &c. In an exemplification of the charters then passed, it appears that the King was supplicated to that effect by Prelates and other ecclesiastics, also Earls, Barons, “*and other secular or lay persons* §.”—In 1286, a Parliament, conference, or general council, is mentioned by Tyrrell, but its members or transactions do not appear.—In 1289, another

\* Appendix to Tyrrell, vol. v. p. 209, where the writs are given.

† Carte.

‡ Stat. at large.

§ Ibid. and App.



Parliament is mentioned, but very imperfectly described.—In 1290, we find a Parliament, and a writ to the sheriffs, directing them to cause to be chosen in every county, *two or three* of the most discreet knights \*, “*et ad laborandum potentioribus*,” (translated), the ablest for dispatch of business, to *consult and consent* for themselves and their communities, to such things as the Earls, Barons, and great men, shall think fit to agree upon. In the beginning of the writ, it is said that the Earls, &c. had specially requested the King to have conference and treaty with themselves and others of the counties, “*concerning certain matters*.” Upon this occasion there was a tax granted †, and several laws were made, of which the authority, according to the statute ‡, is the King in his Parliament, “*at the instance of the great men of the realm, granted, provided, and ordained* ;” also, for the affection he bears “*unto his Prelates, Earls, and Barons, and other of his realm, hath granted*.”—I see little reason to doubt that these statutes were made in the Parliament to which the above-mentioned knights were called. They contained regulations concerning the alienation of lands, which were new and important, and

\* Brady, Answer to Petyt, p. 149.

† Tyrrell, vol. v. Appendix, p. 130. Brady, Hist. vol. iii. p. 96. Tyrrell, vol. iv. p. 182.

‡ Stats. Westm. third, and Quo war. anto.



besides fit subjects on which such knights or gentlemen from the counties might naturally be consulted. In 1292 and 1293, there appear by the statute-books to have been Parliaments held: the former is called a full Parliament; and the enacting authority runs nearly in the same style as before: we know hardly any other circumstances of them requiring notice. In 1294, there was a Parliament on the 12th November, which was in the twenty-second Edward I. Upon this occasion four knights were summoned by writs to the sheriffs to the following purport; *whereas we desire to have conference and treaty with the earls, barons, and other great men, upon certain arduous affairs concerning us and our kingdom on the morrow of St. Martin, &c. we order you to cause to be elected two knights of the most discreet, and ablest for the dispatch of business, “ad laborandum potentiöribus,” and cause them to be with us, &c. with full power for themselves and their counties to consult and consent to such things as the said earls, barons, and great men shall, by agreement, ordain, &c.*—Then under date of the following day, there issued other writs, which, after reciting the preceding ones, order, that besides those two knights, the sheriffs shall cause two others to be chosen, “*legales, et ad laborandum potentes,*” and cause them to come with the former, &c. “*ad audiend. et faciend.*” to hear and do what shall then be more fully



*enjoined* \*.—Nothing that concerns this inquiry is said of their transactions, except that a tax was agreed on.—Another Parliament was summoned the following year, 1295, and the 23d of the reign. The writ states, *that whereas the King wished to have conference and treaty with the earls and other great men, about providing remedies for the imminent dangers of the kingdom in those days, wherefore he had summoned them to be, &c. in order to treat, ordain, and do, “ad tractandum, ordinandum, et faciendum,” how such dangers might be abviated: the sheriff is ordered to cause to be chosen without delay, two knights of the county, two citizens of each city, and two burgesses of each borough in it, of the most discreet, “et ad laborandum potentioribus,” and cause them to appear, &c. so that they have full power for themselves, their counties, cities, and boroughs respectively, to do then what shall be ordained by the common advice, “ad faciendum quod tunc de communi consilio ordinabitur,” &c.* †

Such is the literal substance of this writ, which was sent to all the sheriffs of England. No laws appear to have been made at this or the preceding Parliament, but the principal object towards the defence of the country was most probably a supply,

\* Brady, Answer to Petyt, p. 151; and Treatise on Boroughs, p. 61.

† Brady, *ibid.*, 155.



and it was granted accordingly \*. The clergy had been assembled by a particular writ, which will be mentioned hereafter. For this assembly, it is said, writs were sent to about fifty cities and county-towns, and to about seventy other populous and trading places, but rather towns of ancient demesne than boroughs, and barely able to pay the wages of their deputies, for which reason many of them were not summoned again †.—The next Parliament is in 1296, of which we hardly have any thing now recorded but that an aid was granted; and in the following year there were two or three Councils, or Parliaments, held, concerning which there appears nothing material to the present purpose. It is highly probable there were knights from the counties, and there might be deputies from towns.—In 1297, two Parliaments or Councils were held, in which there were knights, and possibly citizens and burgesses, as a tax on towns was granted.—In 1298, the twenty sixth Edward I. there was a Parliament at York, at which there were knights, citizens, and burgesses; the representative parts of this assembly consisted of two knights for each of thirty-seven counties (Cheshire, Durham, and Monmouth, being excepted); and two citizens or burgesses for each of about ninety ‡ towns. The proceedings of this Parliament probably form a

\* Brady, Carte, Tyrrell.

† Carte.

‡ Ibid.



part of the many public documents of the reign that are lost. 'In the following year there were one or two Parliaments or Councils, of the members of which, the author has not met with any account; the statutes of the time convey no different description of the enacting authority than what preceded, and has been noticed.—In 1301, and the 29th of the reign, a Parliament was held, and to it were summoned *the same knights, and the same citizens and burgesses as had been sent to the preceding Parliament* \*. The writ contains various other matters, different from what appear before or after, but not necessary to be noticed here, unless as one of the numerous proofs, that show the novelty, and unsettled state of representation. The little that is preserved of what might be transacted at this Parliament is immaterial; but at the preceding assembly, where the same representatives had attended, several laws were made by the authority of the King, "*at the request of his prelates, earls, and barons, assembled in his Parliament* †."—In 1306, and the thirty-fourth of the reign, the summonses run again in a different manner; two knights and two citizens from each county and city were to be returned, but from each borough *two or one* burgess according to its size ‡. On this occasion a tax was granted.—In 1307, there was a Parliament

\* Brady, Answer to Petyt, p. 152.

† Stat. Art. *supra* Chartas.

‡ Writ, Brady on Boroughs. Appendix, No. 12.



at Carlisle, in which there were deputies from towns. It consisted of eighty-seven temporal peers, twenty bishops, sixty-nine abbots and priors, other of the inferior clergy, two knights of every shire, and two citizens and burgesses of every city and borough \*.

Such was the changeable form of representation under Edward I. at some period of whose reign, *that of towns must indubitably be considered to have taken its rise*, for the assembly under Mountfort's usurpation can be viewed in no other light, than as the transitory experiment of an upstart rebel. It was now an expedient devised and successfully practised by a legitimate prince, for raising the supplies which his predecessor had found it so difficult to obtain,

It seems agreed by all authors, that the King could talliate or tax, at his pleasure, his demesne towns†; the power, however, was to be used with discretion, and it had not been customary to exercise it so frequently as the King's occasions came now to require supplies; it was, besides, effected in a manner obviously inconvenient; it was usual to send the King's justices or other commissioners to each place, to demand the contribution, and agree with the people on the amount.

\* Stowe, Chron.

• † See particularly Brady, vol. i. p. 179.



Historians often mention these circumstances, and Mr. Carte gives a particular instance in the twenty-second of this King. After the barons and knights had granted an aid, the city of London and others were treated with, and made a grant (as it was then called) of a sixth of personal estates \*: this was done when there were evidently no deputies from towns in the Parliament. London was particularly applied to first, as an example to others, and then, “ *there were commissioners appointed to ask, require, and effectually induce in person, the men of the King’s demesne cities and towns, in all the counties in England, by all ways they should see expedient, to grant a sixth part, as London had done †.*”—In the following year, the twenty-third of his reign, the public exigences increased; France was making mighty preparations for invasion, and meditated the destruction of England. Upon this great national urgency, it was natural for a Prince of Edward’s vigorous talents, to adopt extraordinary measures, and call forth all the resources of his kingdom in its defence. The towns in general had acquired what was riches in the then scale of things, and it was fit that all should contribute to the general exigency; they were, therefore, summoned to send deputies to a great national assembly, as appears by the writ just recited, in order the more effectually to co-ope-

\* Carte, vol. ii. p. 258. Brady on Boroughs, p. 65.

† Tyrrell, vol. iii. p. 182.



rate, in what concerned so deeply every part of the state. The great riches of the clergy in those days made their contributions an object of consequence in the general scale of taxation, and this was so much felt, that proctors or deputies of the inferior clergy, were summoned, then also for the first time; and, therefore, the reasons and necessity of it\* were particularly explained to the Archbishop of Canterbury, in the writ by which he was ordered to apprize the clergy of his province of the King's pleasure on that head.

This explanation of the first assembly of deputies from towns, seems as clear as such a circumstance can be expected to appear in that age†: the representation of the minor tenants in capite, or freeholders, was an obvious consequence of the increase of their number, under tenures which carried along with them the original right of attending the King's court; for, when they became numerous, and the aggregate of their possessions considerable, the King's occasions for taxes being at the same time urgent, such people could not well be assessed without some consultation, some agreement on the matter; and it was equally natural, that they should be required, on the part of the King, and

\* Brady, Answer to Petyt, p. 155, where the writ is given.  
 † Hume, vol. ii. p. 284. Carte, *ut supra*, and Brady *passim*.



disposed, on their own parts, to send deputies to treat, ascertain; and agree upon such contributions, 'as might answer the public exigencies on the one hand, and be reasonable for their means and circumstances on the other. The system of representation, or deputation, might, from that trial, be the more readily extended to towns, when the urgency of taxation increased; but it is utterly inconsistent with the known state of persons in that age, to suppose that the representatives of towns had at first any share in the legislative power. The clergy were then unquestionably more independent of the Crown than the inhabitants of towns; and one of the very few circumstances handed down to us concerning the proceedings with regard to taxes, in the reign of Edward I. shows how an opposition on their part to the King's measures was then treated. A large aid having been demanded, which the bishops seemed willing to grant, but the majority of the next orders standing against it, the King sent a party of knights into the room where they were assembled, and " Sir John de Havering thus accosted them on the King's behalf; *It is His Majesty's pleasure, that you now grant him half of your revenues, and let him that dare contradict this, come forth and show himself, that he may be known*; upon which the lesser dignitaries, being affrightened, immediately complied with



the King's demands\*." It will from hence be readily judged, how unavailing an opposition in an inferior body must have been, and we may safely conclude, that the meeting of deputies had for its object in those days, the manner and means of raising the supply, rather than any effective power of granting and refusing it. The new measure varied nearly as much in its manner during the succeeding reign, but before we proceed upon it, a cursory retrospect of the general political circumstances of the government under Edward I. will be no inapposite introduction.

That the legislative authority had not materially changed its situation, will have appeared by the notices of the enacting power, recited in the several statutes referred to, and from which the others differ very little†. The provisions of the charters were certainly coming more into use, and their beneficial effects began to be felt; Edward I. enforced the execution of the statutes by all under him, but observed them no more himself than suited his occasional purposes: suffering, as far as depended on him personally, no one to violate the law, but indulging himself in its infringement with a high hand. He levied money of his own authority‡, and practised interference

\* Tyrrell, Hist. vol. ili. p. 80.

† Reeves's Hist. of the Law.

‡ Tyrrell and others.



with the course of distributive justice, notwithstanding the provisions against such abuses. He fined the judges by his own authority \*, and he put the whole body of the clergy out of the protection of the law by an edict nearly similar. He had the weakness and the wickedness to obtain a dispensation from the Pope, to free him from his oath to observe the perambulations, &c. of the forests; and complained of the Scotch having a like absolution from their engagements to him †. Notwithstanding all this, Edward I. is styled one of our greatest and our best princes. It has indeed been said, that when absolute power falls into the hands of an able and a good man, a nation will prosper and be benefited by his government, and the apothegm receives some illustration from this prince's reign. Edward called several Parliaments and Councils that I have not mentioned, as the transactions of the time are but imperfectly preserved, and it is difficult to reconcile many of the statements and dates of our historians with other authorities upon the same head. We have, however, proof that the deputies from towns transacted their business by themselves, for by a record which Dr. Brady has print-

\* Reeves's History of the Law. He says that from the best consideration of the different accounts of that transaction it does not appear to have been passed in Parliament, but to have been a mere exertion of regal power.—Vol. ii. p. 277.

† Tyrrell.



ed \*, of the thirty-fourth of this King, it appears that the temporal peers, the clergy, the knights, citizens, &c. were first assembled *before the King's council*, by whom it was shown them, on the part of the King, what reasons and urgency there were for a supply; then the *prelates, eurls, barons, and other great men, with the knights of shires*, taking the same into consideration, made a grant, &c. After this the record proceeds to say, *the citizens also, and burgesses of cities and boroughs, and others of the King's demesnes, being together*, and treating concerning the premises, considering the burdens, &c. granted the aid; and they seem generally to have been dismissed after that business †.

There is a statute in the reign under consideration which deserves particular attention, namely, that which is commonly designated, “*Dè tallagio non concedendo*.” Owing to the obscure diction of those times, the various impositions in use are occasionally confounded by reason of an indiscriminate application of different terms in denoting them. It is, however, certain, that the Kings were anciently entitled to an aid called *tallagium* from their demesne towns exclusively, which seems to have been of a different nature from the sup-

\* Appendix to Answer to Petyt, p. 29.

† Carte, vol. ii. p. 259. Hume, vol. ii. p. 286. Tyrrrell, vol. iii. p. 145.



plies called *scutagium vel auxilium* in John's Charter; these were imposed on personal effects, and had been usually granted by the great councils of clergy, nobility, and tenants in capite, on whom depended all towns and inhabitants that held not directly of the Crown, and were liable to talliages as has been stated. Seeing, then, that by the policy of assembling deputies from towns generally, who could, when sitting by themselves, be induced to agree to assessments upon their order, the King was likely to establish a new method of obtaining supplies, in an easier manner, without the intervention of the barons, and, perhaps, to a greater extent than had before been practised, there is good reason to believe that the clergy and nobility availed themselves of an opportunity peculiarly favourable, which then occurred\* for preventing the King from being thus rendered so far independent of them. Although there may, perhaps, have been deputies from towns in the Parliament when this law was passed†; yet it is uncertain, and there is no appearance of their having had any share in the measure. Such, therefore, seems to be the consideration to which we owe this memorable law. Its object was clearly to prevent the general taxation of towns taking place, without the concurrence of the barons; for had it been acted upon literally and fully, the representatives

\* Carte, vol. ii. p. 274.

† It has been doubted, whether this was in the 25th or 34th of Edward I.—I incline to the former date,



of towns would have exercised a *veto* upon every tax, with the same effect as the<sup>n</sup> barons\* ; but that was a matter very far from being in contemplation ; and was in fact incompatible with the nature of things at the time. This general restriction against imposing taxes is therefore more properly to be considered, as a measure resulting rather from the jealousy, entertained by some very powerful barons, of the control they wished to preserve in the state, than any real care of the proper interests or rights of the towns. It was, however, a happy approach to the system since perfected, and formed a barrier between the highest and the most defenceless powers in the Parliament, which, by change of circumstances and times, the latter has at this day improved to a degree that it is not necessary to point out.

There is, in the histories, mention of a speech on the part of the King to the Parliament in the year 1301. Something to that purpose may probably always be supposed to have taken place, but this is the first of which the particulars are given. It is also said, that some discontent was expressed in Parliament upon grievances, and that the King gave assurances of granting the necessary redress, in order to forward the business of a supply, then very pressing<sup>y</sup> wanted †.

\* See the Statute.

† Tyrrell ; but not noticed by other authors.



The first occurrence worth noticing respecting Parliament in the reign of Edward II. is an alteration in the writ by which the representatives both for counties and towns were to be chosen ; it had before been directed, that they should have power to do, “ *ad faciendum*,” what should be ordained ; it was then altered, and they were to be empowered to do and consent, “ *ad faciendum et consentiendum*.”

Yet the words of these writs cannot, in point of fact, be taken for conclusive as to the real office of the persons returned ; because, among other reasons, it is found that the functions implied were not actually performed. Mr. Carte has well observed, that the true meaning of many words in those days is not to be interpreted according to the mere etymological import now held ; the subject matter and usage of the times are to be kept in view, because many words were used in meanings that could not now be interpreted, but by an attention to the circumstances to which they are applied, and which alone will lead to the true understanding of them, when no inference from the present received import would perhaps enable us to make out their right sense\*.

\* There is a statute of Edward II. which has for title, “ *Ne quis occasionetur pro felonis seu transgressionibus*,” &c. It would be certainly impossible to conjecture the meaning of the



It was under the same writ to the shireffs that both county and town members were chosen, and the powers they were directed to be invested with, *applied equally to both*. We have also seen that the knights from counties did sit, at first, with the barons; for notwithstanding they were personally inferior to them, yet officially, and as representing a great number, possessing privileges similar in nature, although inferior in degree to what so much aggrandized them; so circumstanced, they were admitted to share in the general consideration of the whole assembly; but it cannot be contended, that under Edward II. the citizens and burgesses exercised or claimed any such privileges. When we look to the writs for knights, before citizens or burgesses were called, we find, as hath been stated, that they were required to be empowered to *consult* and *consent*; but when afterwards, the writs were for deputies both from counties and towns, the object of the coming of *both* was at first, according to the

word *occasionetur*, without examining all the circumstances in connexion with it.

A view of the present meaning alone of some old terms may have either originally led to the discussions upon our ancient legislative establishment, which I apprehend has been misconceived, or it has at least furnished means of supporting opinions inconsistent with all collateral circumstances. What has been observed on this subject is undoubtedly true, that if words are restrained to a certain sense by general usage in a former age, it is wrong to explain them by a dictionary of the present time.



words, *to do only*; now it is not to be conceived that the knights enjoyed less consideration upon the latter occasions than on those preceding, for if there was any difference, they were gaining, not losing ground in political respects. We cannot, therefore, safely look to the terms alone of the writs, in order to estimate the real functions of the citizens and burgesses in the first Parliaments to which they were called, but must take them as resulting from the facts; and there is certainly nothing in this reign to show any accession of power to the deputies of towns.

The petition from the town of St. Albans, which has been mentioned before, occurred in this reign. It must not, however, be concluded that representation was then sought for as a privilege, or valuable distinction, of which the loss was such a prejudice as to make serious matter of complaint; it appears, on the contrary, that in this reign a seat in the Upper House was an honour not coveted by some who were summoned to it; for we find that the Abbot of Leicester petitioned to be excused coming to Parliament, not on account of poverty, but as not holding *in capite*, and therefore exempted\*. It is, besides, well known that the sending of burgesses was in this period avoid-

\* Gurdon's History of Parliaments. Prynne. Brev. Parl. Red.



ed, not desired; and if any thing were farther wanting to show that the St. Albans petition was grounded on other motives than a real desire of regaining a valuable right injuriously withheld, it would be satisfactorily found in the circumstance of the few returns which that borough made, up to the eleventh of Edward III. after which period it is found quietly submitting to be unrepresented for upwards of two hundred years \*. The variable state of representation is fully evinced in this, as it continues to appear in the next reign. The city of London returned sometimes two, sometimes three, and sometimes four citizens, when by the writs it was only empowered to return two; it sometimes returned four, or three, and stated that any three or two of them had the requisite authority; and this was done repeatedly without notice being taken of it †.

The deposition of Edward II. forms a very remarkable proof of the unsettled state of the government; a weak-minded or indolent prince was in those days unfit for the throne, and almost incapable either of protecting his person, or preserving his authority: thus Henry III. without aid from the spirit and exertions of his son, had fallen a sacrifice to the ambition of some of his power-

\* Willis Not. Parl. Prynne, Brev. Parl.

† Prynne, ut supra. Brady on Boroughs.



ful subjects. There can hardly be any greater proof of the defects of a government, than that either the security of the establishment itself, or the condition of the people, should depend much on the particular talents of the monarch; and it seems to have been reserved nearly for the present age, and the society into which we have had the happiness of succeeding, to devise those constitutional regulations, which by throwing a sacred veil over the personal characters of our kings, has fixed a responsibility where alone it can practically and advantageously rest.

The reign of Edward III. furnishes various occasions for remark in the objects of this inquiry. Some of the causes to which I originally alluded, as occasioning the fortunate turn imparted to our government, begin more evidently to appear. The charters, their repeated confirmations and enforcement, the statute "*De Tallagio non concedendo*," all were extorted from the respective kings by the necessities to which their ambition, their prodigality, and the improvident management of their revenues had, on various occasions, reduced them\*. We shall now also begin to perceive more clearly, a policy pretty generally adopted by the Crown, which tended to favour and forward the rise of the Commons to greater weight in the

\* Blackstone on the Charters.



political scale, than they could constitutionally claim in the acknowledged construction of society at the time when burgesses were first called. This new expedient seems to have been cherished as an instrument suiting every way the views of the Crown; condescension and favour to the Commons were generally useful in facilitating the aid of a present supply, and the knights of shires, being joined to the representatives of towns, formed together a body which it was good policy in the Prince to conciliate, as a counterpoise to the order of barons, who were sometimes able, and often inclined, to oppose his measures. This extraordinary attention to the Commons was, however, at first premature and ill-applied; and Edward III. in his (then unexampled) condescension to Parliament, and particularly the Commons, showed a degree of deference bordering upon weakness. He consulted them, and asked advice, when he must have known that no useful information could be obtained; this was peculiarly conspicuous when they told him in reply, that they were not able to give advice, and pray him to consult his nobles and council.—When asked if they would agree to a peace with a foreign enemy, they answer, that they submit themselves wholly to the order of the King and his nobles\*.

\* Cotton's Abridgment of Records, pp. 51, 88



When, added to such circumstances, we find the King encouraging them to represent grievances and make requests, using at the same time his own free will as to the redress or consent to be granted, it is evident there was another object to be gained on the part of the Crown; such measures were clearly expedients of policy, not the practical exercise of rights. In fact, the King's wants were so great and frequent, that he endeavoured, by appearing to consult the Commons, to make them parties in his ambitious projects, in order thereby to establish a claim on their pecuniary assistance in the prosecution of them. The revenue had been much improved from its reduced state at the accession of the first Edward, and was now held sufficient for all the usual purposes of the government; but the views of conquest and aggrandizement entertained against the Scotch and French by Edward I. and III. together with the impaired finances of Henry III. and Edward II. reduced princes of enterprising spirit, to a necessity of resorting to all the devices that could be framed, for the support of their foreign wars. Although they were not scrupulous in using the means which the power and prerogatives of the Crown then enabled them to exert, yet were they obliged also to have recourse to other measures, in order to induce their subjects to contribute universally, in a



more regular, and apparently satisfactory manner, to the exigencies of the state.

During the long reign of Edward III. the variations in the representative system were as great as in the period before, but it is hardly necessary to enter into much detail of them \*. The sort of

\* In the eighteenth of Edward III. there were two knights, but neither citizens nor burgesses, summoned to Parliament. In the twenty-third, Bedfordshire is said to have returned three knights. In the twenty-sixth and twenty-seventh there was but one knight from each county; and in the twenty-sixth one burgess. In the twenty-fourth the sheriffs were enjoined not to return as knights, citizens, or burgesses, any persons who were "*placitatorum aut querelarum manutentores aut ex hujusmodi questu viventes*:" this was meant to exclude lawyers. In the writs of the thirty-first of this reign the elections are directed to be not only "*de discretioribus et probioribus*," but also, "*de elegantioribus personis*." In the thirty-fourth there is a strange return for the county of Northumberland; the writ, as was not unusual, directed the election to be "*de discretioribus, et probioribus, et ad laborandum potentioribus*." To this the sheriff returned, that there was only one knight, "*Walterus de Tindale, qui languidus est, et impotens ad laborandum*;" and other persons were returned. It is to be observed here, that returns of knights had then been restricted to "*milites gladiis cincti*;" i. e. military tenants actually created knights, and that Northumberland and Newcastle upon Tyne were often so much harassed by the predatory warfare of the borders, that they could not make the necessary returns to the parliamentary writs. In the forty-fifth of this reign one knight, one citizen, and one burgess, from each county and town were called, and directed to be of the last that had served; the names of the persons to be returned were also inserted. The city of London returned



persons directed by the writs to be chosen was also in some cases altered, yet the functions of the members when chosen and assembled were hardly

at different times two, three; and four citizens. Some of the assemblies here referred to have been called councils, but that circumstance is of very little consequence, as statutes and legislative regulations were made at the meetings.

The first instance of undue election noticed, occurs in the twelfth of Edward II. and was for the county of Devon; the petition complaining of it was presented to the King's council, and from thence referred to the Court of Exchequer. The next was in the thirty-sixth of Edward III. for the county of Lancaster, and seems not to have been known till the writ for the expenses was sued out; that is, when the Parliament was over. A precept was then ordered by the King to the sheriff, to inquire whether the election had been duly made; the under-sheriffs, however, got possession of this writ, and, without executing it, proceeded to levy the usual wages. Upon this another precept was directed to the keepers or justices of the peace, to inform themselves of the premises, and certify, &c. and the sheriff was ordered to stay the levy of the wages. The fact was at last found to be, that the under-sheriffs had returned themselves, without any election, for the sake of the wages.—*Carter*.

This author, who is entitled to great praise as a diligent and well-informed historian, is not entirely without prejudice. They are observable in his animadversions on lawyers sitting in Parliament, wherein there are, however, some just observations. He says, that such irregularities and inconveniences (which he had noticed) gave rise to an act, disabling them from being returned; this is one of several that are not printed among the Statutes, or only in the Appendix. The historian argues besides, as I think successfully, against Sir E. Coke's objections to that act, on a very difficult distinction between *statute* and *ordinance*, which, even if otherwise tenable, would



in any way different; they had acquired no positive additional and regular power, but the means for obtaining it were in preparation, and the foundation of the future rise of the Commons' House was in fact established, through the circumstances to which we have just adverted.

I have before noticed a very extraordinary attempt of the borough of Barnstaple to obtain certain privileges which it claimed. That town having early participated in royal favour, may therefore be supposed, to have been at least as far advanced in immunities as towns in general then were; I now take the following particulars from the return to the last inquisition had upon its claims (18 Ed. III.), which may be considered as giving a true state of those circumstances to which it relates, and will thereby enable us to judge of the probable condition of other boroughs.

It was held in chief by J de Auddelegh by barony; the burgesses could not devise their tenements by will; by the consent of the lord of the town they might choose a mayor; but all pleas in the borough were to be held before the steward;

hardly apply to this case: it does not appear that this law is repealed — *Willis, Not Parl* *Brady on Boroughs. Whetlock on the Parliamentary Writ. Prynne, Brev. Parl Red. Brady, Answer to Petyt, &c. Barrington on Statutes Glanville's Election Reports. Stat. 2 of 27 Edward III. Proemle.*



the lord had assize of bread and beer, and assay of weights and measures, and a ducking-stool and pillory; also a market on two days of every week; and the burgesses were obliged to find two men of the borough to collect the rents, amercements, tolls and profits of fairs and markets for the use of the lord \*. Many other circumstances were averred, but less materially affecting the freedom or dependence of the inhabitants, than what may be gathered from this extract. When, therefore, the general legal consideration and rank of burgesses, before ascertained †, is combined with this more particular notice of their situation as to their lords, enough will be seen to indicate that the deputies of such a description of men could not in those times be called, or assembled together for any effective participation in the governing measures of the state.

When, by the favouring policy of the Sovereign, this order of men was to be cherished, courted, and advanced, it seemed not unsuitable to such purpose to connect them with the representatives of the inferior order of landholders; these, although they possessed an acknowledged right of being parties in the proceedings of the national Council, were still at a great distance below the barons, and it became no inconvenient

\* Willis Not. Parl.

† P. 138.



arrangement that they should associate with the rising deputies of towns, among whom they could bear some sway ; they were likely to prefer such a situation to that of being passive auditors and attendants on the proceedings of the baronage, while to the others such an association was a compliment and an advancement.

Here, I apprehend, lies the foundation of the legislative power acquired by the representatives for towns, and it will not be improper to make some farther remarks on the manner or occasion of their coming into such a situation.

Opinions have been entertained by various authors, that towns were called upon in virtue of a right by the tenure of land ; and the notion has also been embraced by a distinguished character of the present day \*. These writers seem to have been fully convinced of the high exclusive importance attached in early times to the possession of land *in capite*, and therefore, perhaps, have been led to the idea of land having been conferred by the Crown on towns, about the same time that they were favoured with the franchises and name of boroughs, or free boroughs. But the import of a grant to be a free borough was

\* Lord Erskine, Dissertation on the Origin of the House of Commons, anno 1777.



nothing more than that the town should be free from uncertain and arbitrary impositions by the King, patron, or lord, in consideration of a certain fixed rent, then called a fee-farm rent, to be regularly paid to the Crown or the lord ; but these grants or charters, of which many have been published, convey no land. It may however be urged, that there might be other charters or grants of land ; or that the holding the privileges of a free borough under a grant immediately from the Crown, might be deemed equivalent to a free holding, or holding in chief of land. But even if this supposition were admitted, although it seems doubtful \*, still the various towns which were held of subjects, and which were called upon to send deputies, must have had their writs upon some different footing. All towns belonged originally to the Crown, and were part of its demesnes, or were granted to some baron ; there were also a few powerful persons of that order so highly favoured, as to have certain *jura regalia* granted to them ; such particularly were the Earls of Cornwall and Devonshire, and a few other great proprietors, principally in the western counties, where many of the boroughs held their privileges of subjects both originally, and at the time of being called upon to send deputies to the Common Council or Parliament.

\* Coke, apud Dalrymple on Feudal Tenures.



But that they were first called with the view of forwarding the procurement of supplies, and were afterwards raised, so as to become, with the Knights of shires, in some degree a counterpoise to the barons, is consistent with all the facts that we know of those times, and is admitted by many writers, otherwise disposed to attribute it to ancient right \*.

\* “ The Commons seem at first, among other reasons, to have been opposed as a counterbalance to their [the barons’] exorbitant power; and they naturally adhered to the Sovereign, from aversion to the barons, who were no less their oppressors, than opponents to the Crown.

“ The Commons were for a long time, nevertheless, so far from being considered as essential branches of the Legislature, that even after they were unquestionably restored to Parliament, yet we find that they were not constantly and *regularly* summoned as a distinct order, the sheriffs omitting them at pleasure; and the King sometimes, in the writ of summons, expressly naming the representatives which the sheriffs were to return.

“ Their attendance was, for a long time, deemed a burden both to representatives and constituents; and though after election the members gave security for their attendance, yet it is common to find the Parliament adjourned, because many of the Commons were not come, nor the writs returned.

“ In most of the ancient statutes, they are not so much as named; and in several, even where they are mentioned, they are distinguished as petitioners merely, the *assent* of the Lords being expressed in contradistinction to the *request* of the Commons.

“ One of the principal causes, however, of their being summoned, which was to procure their consent to the levying of taxes, naturally contributed to extend and enlarge their influence; for, after they had granted supplies to the King, in which they were sometimes emulously and ostentatiously liberal,



Having already adverted to the terms of the writs which formally called these representatives,

they reasonably expected some return for their liberality. Accordingly, after having provided for the King's necessities, they took occasion to present petitions for the redress of grievances; from which petitions, most of our early statutes are framed."—*Ruffhead's Statutes at Large, Preface, p. xii.*

From what follows, however, we find that all the petitions were not framed into statutes; and also, that statutes founded at first upon such petitions, materially differed from them in some respects when drawn up.

I must remark upon the expressions, "*unquestionably restored to Parliament,*" that this author has in another part of his Preface said, "We may nevertheless venture to conclude, that the authority of the Commons, however constitutionally extensive in point of right, soon" (*I suppose soon after the Conquest*) "became very inconsiderable in effect. We may indeed judge of the weakness of their influence, by attending to the unequal balance of property among the Saxons; which is, perhaps, one of the surest rules to determine the respective powers of the different orders of the Constitution. And, indeed, it appears to have been so small, that it is no wonder we find the trace of it for some time effaced by the revolution effected by William the Norman." (p. ix.) In a note upon the "*point of right,*" in the beginning of this quotation, the author concludes thus: "But after all perhaps, it is more discreet to confess our ignorance in these points, than to form uncertain conclusions, or hazard vain conjectures."

I shall abstain from commenting on the right set up before the Conquest, and leave it to the learned gentleman's "own showing." But it is to be observed of the period subsequent, that when, upon the granting of Magna Carta, anno 1215, the Prince was in the power of his subjects, the claim was not even attempted; and that afterwards, when the Commons found it, by fortuitous circumstances, within their power, they proved long unequal to the exercise of any share in the legislation.



and also to what they are found to have performed when assembled ; I have only to add, that during the reign of Edward III. there is no appearance of their being consulted upon the passing of laws generally ; and their petitions upon grievances, which they were so much encouraged to present, were not more frequently complied with, than rejected or evaded. We have sufficient authority to say that the Commons (meaning the representatives both for counties and towns) remained for nearly two centuries in the state of very humble petitioners \*, the statutes, and the records of proceedings in Parliament show it.

The original functions of those representatives being of no higher importance, it is the less surprising that it was left to the sheriffs to summon, or not to summon, what towns they thought fit, as is abundantly proved ; there are also proofs of towns making no returns to the sheriffs' precepts, apparently according to their own pleasure. The reasons of these irregularities cannot be ascribed to any change in the size or circumstances of the places, because the difference in the periods when returns or no returns were made, will not admit of it. In 12 Edward III. the sheriff of Wiltshire returned for Sarum, Wilton, and Downton only, and concludes the return by saying, there were no

\* Blackstone.



more cities or boroughs in his county; yet Bedwin, Calne, Chippenham, Cricklade, Devizes, Luggershall, Malmesbury, and Marleburgh, had frequently returned before, and in the same reign. Mr. Prynne and Dr. Brady give various instances to that effect; as in the thirty-sixth of this reign, the sheriff of that county returned for New Sarum, Wilton, Old Sarum, Downton, Chippenham, Calne, Marleburgh, Devizes, Malmesbury, Cricklade, and Bedwin; and then concludes, *there are no other cities or boroughs, &c.* In this return Luggershall is omitted, which had sent members to several preceding Parliaments, and even so late as the thirty-third of this King. There are many similar instances of variations, for which no sufficient cause can be assigned, except the discretion of the sheriffs; Dr. Brady, indeed, supposes, that on some occasions, boroughs might either be so poor, as not to be able to pay the wages of the members\*, or that there might not be, at particular times, in certain boroughs, two persons fit for the trust, the persons then chosen being really townsmen or burgesses. The last of these causes might possibly have occurred, but neither is likely to have been the true

\* Until the 17 Edw. II. the wages of a burgess amounted to five groats per day, and after that time, to two shillings: the wages of the knights were double.—*Chamberlaine's State of England*. And temp. Hen. VIII. they seem to have been higher.—*Stat. 35 Henry VIII. c. xi.*



reason; and in either case there was no judge of the matter but the sheriff.

It seems generally agreed, that for a long time after the reign of Edward III. the sending of burghesses to Parliament was deemed rather a burdensome duty, than a desirable privilege; and although the petition of Barnstaple, that has been mentioned, occurs in this reign, yet there is also a petition from Torrington, in Devonshire, to be relieved from the obligation of sending members, imposed by the King's writ \*. There are in the records of those days occasional irregularities, and sometimes contradictions, which seem unaccountable, and this occurrence furnishes an extraordinary instance of it. When Torrington was exonerated by the King's patent, from sending burghesses to Parliament, the reason expressed was, that the town ought not to be so *burdened*, inasmuch as it had not been accustomed to send before the twenty-first of his reign, at which time the sheriff had maliciously summoned and returned two men from the town, and thence it had been *burdened* with sending them to succeeding Parliaments, whereby much trouble and expense had been incurred; and as upon searching the rolls of Chancery (continues the instrument †) it did not appear that the town had returned before the said

\* Willis says others also were so relieved.

† Pryne, Brev. Parl. Red. p. 239.



twenty-first year of the reign, therefore the King, being unwilling that the town should be thus unduly burdened, exonerates it from such sending in perpetuity. Notwithstanding all this, there have been found twenty-two writs and returns for Torrington, previous to the twenty-first Edward III. And it will perhaps be thought still more extraordinary, that up to the fifth Henry VI. this town appears to have returned members to twelve different Parliaments, one of which was the forty third of Edward III. i. e. the year and Parliament following the patent of exemption.

If we look for any degree of independence or free agency exercised by the Commons, we find nothing but acknowledged inability for any legislative function, and very striking instances of the authority they did possess being abused to the worst of purposes. Under Edward II. the Queen, and her favourite Mortimer ruled at last every thing, and the Parliament was long subservient in all their measures; when Edward III. was fully informed of the state of affairs, his writ for calling a new Parliament, showed in the most forcible terms the ill government that had been suffered \*. The blame of this and many similar derelictions of public duty is, indeed, but little to be ascribed to the Commons, although as often as their fac-

\* See the writ in Brady.



tious and turbulent superiors, the barons, chose to give opportunities for their co-operation such as it was, they were ever ready to concur in the projects however unconstitutional.

The incapacity of the Commons, (which term may be now taken to include the knights of shires) is so conspicuous in almost every Parliament †, that it seems unnecessary to produce any particular instances of it, and they appear generally to have had a committee of lords and bishops appointed to assist in their proceedings. With respect to the purity of Parliament from the influence of Government through placemen or the like, we may reasonably infer, that it was not without a good share of this object of popular jealousy, as there are no less than five different petitions that persons in Parliament should not be employed as collectors of the taxes, which were always refused until this King's last Parliament. It seems not to have been usual with the historians of that age to expatiate much upon the management of political parties, which forms so very considerable an object with statesmen of the present times; it is, however, occasionally noticed, and sometimes rather pointedly. When the clergy were excluded from the high offices of state, it appears they prevailed with the Lords and Commons to join in

† Cotton's Abridgment, *passim*.



delaying and embarrassing the public business; and the King, upon a particular emergency, found it expedient to pass the remarkable statute, to which he gave only a dissembled assent, and which he immediately afterwards revoked of his own authority \*. But, in the Parliament of the seventeenth of his reign, the King was in a condition to procure a formal repeal of the concessions that had been thus extorted from him; and on both occasions, there is reason to presume that considerable influence, after the manner of the age, was resorted to. There is, in the fifty-first of this King, a more striking example of the subserviency to which Parliament might be reduced; the elections were then brought so completely under the influence of the Duke of Lancaster, that he was able to prevent almost any of the knights of shires that had sat in the preceding Parliament from being again returned, and the popular acts that had been then carried, were repealed. It is in this Parliament that some have considered the first Speaker to have appeared; he was Sir Thomas Hungerford, the Duke of Lancaster's steward †.

\* Tyrrell, vol. iii. p. 450. Carte, vol. ii. p. 442.

† Stowe, from whom the above account is taken, says, there was a debate among the Commons concerning the person to be appointed their Speaker, and that when one of the knights that had been returned against the Duke of Lancaster's influence became very urgent in favour of De la Mare, it was hinted to



The statute of treasons, enacted in this reign, has been sometimes adduced as showing the power and effect of parliamentary interposition in drawing the just and necessary lines for the distinction of this offence. The share, however, to be ascribed to the Commons in that measure cannot be great, as the petition on which the act was grounded, did not in the least pretend to describe or restrict the scope of its extent, but only states, that several men had been arraigned as traitors, for causes not known by the Commons to be treason, and therefore *prays, that the King, by his Council, and by the great and wise men of the land, would please further to declare the points of treason in that Parliament* \*.

Edward III. was, as has been observed, particularly fond of Parliaments, and he generally affected to ask advice of the Commons, when his only object was to facilitate the obtaining of supplies; when such occurrences were frequent, it was natural that the Commons should gain

him that *if he persisted it might cost him his life*. There is some ambiguity respecting the person proposed as Speaker in opposition to Hungerford, but it will not affect the main point here adverted to, namely, the predominant power of the Duke of Lancaster in this Parliament.—Sir William Trussell appears to have acted in the capacity of Speaker in the seventeenth of this reign.—*Tyrell*, vol. iii. p. 471.

\* Tyrell, Brady, Cott. Records.



some degree of confidence, and also feel the value of their sanction to the supplies so often asked: we accordingly find them on several occasions attempting to annex conditions to their grants; and they once remonstrated against money being raised without their sanction; but the King found means to justify the measure, telling them at last, when the representation was from the whole Parliament, that he was “ *not at all willing to do it without great necessity, and for the defence of the realm, and where he may, to do it with reason* \*.”

Not less extraordinary, in a constitutional point of view, is the revocation by the King's authority of a statute passed in Parliament, which has incidentally been just mentioned. Upon one of the occasions, which happened so frequently in this reign, when the King was under a pressing exigency of supply, he found it advisable not to deny his consent to some petitions in Parliament, which were not only unusual in themselves, but materially affected the acknowledged prerogative of the Crown; and in order to secure the immediate obtaining of a necessary aid, he clothed the obnoxious propositions with his sanction: the public business proceeded, and the Parliament was ended in the usual manner. Soon after this the King, by advice of some great men, who can be sup-

\* Cotton's Abridgment.



posed no others than those composing his privy council, declares that his consent had been unduly given; and being in effect against the constitutional prerogatives of the Crown, which he was bound to maintain, *he decrees the statute to be void.* It remained so; and in the following Parliament, which was not held until two years afterwards, it was formally repealed *upon a petition from the Commons* \*

\* It seems difficult to account for the manner in which these transactions appear in our Statute Book. The first act 15 Ed. III. is given in the volume of Appendix, but the revocation by the King, in its proper form of a writ to one of the sheriff, commanding him *to cause it to be openly proclaimed in his borough*, and subscribed, "*per ipsum Regem et Concilium*," is inserted among the regular statutes. The repeal in Parliament does not appear except in a notice by the editor. Mr. Cate states the King to have declared at the time of giving his consent, that he would revoke it, and it is so mentioned in his writ of revocation.

The omission of the repeal in Parliament amongst the Statutes might create a suspicion of its existence; there is, however, clearly a petition of the Commons to that effect in Cotton's Abridgment, in the seventeenth of Edward III. ‡ It may be remarked here, that this act of the King's was not perfectly sufficient, as, if it were, the repeal in Parliament was unnecessary. It appears, however, that no notice was taken by Parliament of what the King had done being illegal.

‡ The author was not aware, when writing that this entry is stated to be incorrect. (Annual Register, 1791, p. 79 of History.) He has not had an opportunity of investigating the true state of the matter, but he observes that the statement there made is liable to some objection; and in whatever terms the petition of the Commons may be actually entered on the rolls, all authorities agree that there was a parliamentary repeal.



There are other remarkable occurrences in this reign which might be mentioned, but enough has been noticed to show the state of infancy in which our Legislature then was; the Commons were certainly not yet in possession of any real share in the legislative authority, nor had they claimed it; they were, however, proceeding under circumstances which could not fail to lead them to an effective participation in it. A body of men whose concurrence had become necessary to the levying of a considerable portion of the taxes which the state of public affairs required, must quickly have seen the importance of their station; and if those parts of the structure of society which continued to be strongly influenced by the feudal aristocracy had not operated so powerfully against them, it is probable they would sooner have attained their place in the Constitution\*.

The expensive wars of Edward III. produced some other important effects; they gave rise to loans and benevolences, which were in later times carried to so great excess, as to occasion their effectual suppression. They gave rise to the en-

\* There were in this reign two laws passed for the holding of Parliaments every year, but they were not regularly observed. Sir W. Blackstone and his learned editor are of opinion that they are not to be understood to mean that there should be new elections every year, but that the King should provide that a Parliament should sit every year.—*Commentaries*, vol. i. p. 153.



franchisement of many *villains* on the royal demesnes; and when the Monarch had set the example, it may be presumed to have been followed by the barons, when their occasions came to require it, by resorting to the same expedient.—Hence the foundation of an industrious and very useful class in society, free from the degrading services of bondmen.

The formation of a second House of Parliament took place in this reign, and the occurrence is of high importance; for the knights, while they sat in the same assembly with the King and barons, cannot be supposed either to have attained, or even to have been in the way of attaining weight in the legislative or parliamentary scale; but the knights and burgesses when assembled in a body formed together a new link in the chain of the Constitution, a new interest in the state, and *they acquired a new and separate power*. In the short periods, however, of their first meetings, they seem to have had very little to do by themselves, and were probably in a similar predicament to that which Lord Erskine has described, not inaptly, of the Scottish Commons, who, he says, assembling “in the same house with the King and the Peers, were awed by the pride of the Lords, dazzled by the splendour of the Crown,



and sat silent in Parliament, representing the slavery, not the freedom of the people \*."

The end of the reign of Edward III. appears no unfit time to examine whether any rule existed to regulate the representation, which that Prince so much cherished. None, however, is to be found, unless it should be said that every county of right deputed two knights. This, indeed, is slightly adverted to in one of the petitions of the Commons concerning the levying of wages for representatives: it is there premised as introductory to the subject of the application, that of common right there are and should be elected two persons for each county, except for prelates, dukes, earls, barons, and such as are summoned by writs, besides cities and boroughs, who ought to elect from among themselves such as would answer for them. It then proceeds to request a regulation for the defraying of the wages of the county representatives †. Applying this to the practice, it would show, that the counties of England that had not, as Chester and Durham, their peculiar regalities conferred in some special manner, were then accustomed to send two persons to represent in Parliament those who were not under the immediate superiority of the Peers; but when we look to the

\* Prize Dissertation before mentioned.

† 51 Ed. III. Tyr. ell, vol. iii. App. p. 212; where the petition at large is given.



towns, we find, that no such distinct rule, no certain arrangement in that respect was formed. When the Abbot of St. James's by Northampton obtained a discharge from the burden of attending the Parliament, it is said his name was "*razed out of the rolle of them that were to be summoned to the Parliament* \*." But no such roll of towns to be summoned has been found or alluded to; the return of the sheriffs being taken, without examination. That they were unaccountably irregular, has been shown, but no objection in that respect was made, either by the persons returned upon summons, or by the towns omitted by the sheriffs †; the taxes and proceedings were all equally legal, whether many or few burgesses appeared, and no complaint occurs, except the two already noticed, which were evidently the effect of other causes, than the jealousy of a constitutional right; we should, therefore, search in vain for any principle or practice denoting that all who contributed in direct taxation to the aids granted, were entitled to vote for, or to send representatives to Parliament.

Little as yet appears of the manner of any elections, as far as the author has been able to observe; and there is no reason whatever to sup-

\* Whitelock on the Parliamentary Writ.

† This is evident notwithstanding the Act of 5 Richard II. —*Pyne, Brev. Parl. Red.* sect. viii.



pose, that in towns, the elective franchise was materially different from what at present exists. More of this, however, will appear hereafter; and it will easily be seen, where the modern practice of elections differs from the ancient, and whether that difference can be taken as to the prejudice or improvement of the system.

As the petitions upon grievances, and representations of other matters, which the Commons were now in the habit of presenting in every Parliament, very naturally formed the groundwork of such laws as were made upon the points they noticed, it frequently happened, that powerful individuals of the peerage found it convenient to originate measures through that channel, rather than by the personal and direct introduction of them in the upper house. The Commons, composed of various characters very little acquainted with such business, and very unfit for it, were easy dupes to the suggestions of the agents of the great men; and hence the various extraordinary petitions on matters not connected with the interests of their body, of which very numerous instances might be given. Their primary intervention was also used on various occasions by the Crown; the great factions, likewise, and powerful leaders of them generally commenced their measures in a motion or petition of the Commons; and these circumstances contri-



buted more than any other cause to accelerate the rise of this body into weight and importance\*.

In proceeding through the reign of Richard II. it is occasionally found that practices were used to influence the return of persons to Parliament, who were either already engaged in the designs of the respective parties, or might most easily be drawn into them, and we have a circumstantial instance of an undue return, in the seventh of this King†. But the representatives still continued to evince their incapacity for state affairs, by broad and unequivocal confessions of it. Their petitions were now and long after ‡,

\* This is particularly noticed in Mr. Prynne's Preface to the Abridgment of the Records, and is abundantly evident from the references there given, to which many others might be added. From this source seems to have arisen the *practice*, which afterwards became the *right* of impeachments, which Mr. Tyrrell denominates, at its origin in the end of Edward III.'s reign, an innovation in parliamentary proceedings. If, in the first instance of this measure, the thing cannot be distinctly traced to the instigation of some of the higher order, yet it is sufficiently apparent, that such was the real origin of the proceedings of that description, which followed in the factious period of Richard II. and which first tended to confirm the custom.

† It may, perhaps, seem too little to notice, but one cannot help remarking, that this happened in a borough that has since been conspicuous in abuses most complained of in elections, namely, Shaftesbury.—*Prynne, Brev. Parl. Rediv.*

‡ Cotton's Records, passim.



as frequently refused as they ever had been, and the necessity of their assent to laws was not yet firmly established.

The Commons had long entertained, or were prompted to show, a jealousy of the Clergy in Parliament. They had petitioned against their obtaining laws upon their own representations alone \*, and in this reign there was particular occasion for complaint in that respect, although it does not appear that, in effect, the point contended for was gained. There was a law passed not only without the assent of the Commons †, but which, after they had petitioned to have it abrogated for that reason, appears still to have remained in force ‡; and even, at this day, seems by our Statute Book to have been unrepealed for upwards of 100 years §, and as having in that time received a confirmation ||. Yet this very act was declared not to have received the assent of the Commons, and appears to have

\* In the fifty-first of Edward III. "that no ordinance be made at the petition of the clergy, without assent of Parliament, and that no man be bound by any of their constitution, made for their advantage." The answer is, "Let this be more specially declared."—*Cotton's Abridgment of Records*.

† 5 Richard II. Stat. 2. c. 5. Carte, vol. ii. p. 631  
Gurdon on Parliaments.

‡ Ruffhead, Preface to Statutes, p. xiv. Note m.

§ 1 Edward VI. c. 12.

|| 25 Henry VIII. c. 14.



been revoked in the following year \*. I may here add a similar instance of an act in the succeeding reign, namely, the second of Henry IV. c. 15, also against preachers of heresy, and passed without consent of the Commons †; yet no notice was taken of it. I apprehend it was under the authority of this act, that many of the first of those inhuman executions for heresy took place; which continue an indelible disgrace in our history, to a much later period than the repeal of it. These circumstances cannot fail to show that the legislative authority of the Commons was still in a very imperfect state.

The alteration in the structure of the upper house of Parliament, which, about this time, began to take place by the introduction of Peers by patent, who did not hold by barony of the Crown, is a change that must have arisen out of the increasing diffusion of property; such a cause would naturally not be confined in its effects to the superior orders alone, the middle classes of society were also increasing in number, and improving in circumstances: and hence resulted a growing importance to their representatives, to-

\* Cotton's Abridgment, 6 Richard II. No. 52. The repealing act was never printed.

† Ruffhead, ut supra, in text. The law first mentioned is said to have been obtained, and kept in force after the representation against it, by the Bishop of London, at the time also Chancellor.



gether with a foundation and means for popular agency.

Although these changes are plainly discernible, their consequences were not yet ripened into force and effect; for the Commons, when they exceeded their province by petitioning against excesses in the King's household, were checked, and His Majesty being much offended with the presumption, the House was so sensible of the error, that they speedily retracted their proceedings, and gave up the mover of it to summary punishment\*.

The House still found it necessary to have the assistance of deputations from the Peers, to direct and instruct them in their proceedings; this aid they requested, on account of *the great difficulty of their charge, and the weakness of their powers*†. In the first Parliament of Richard II. thirteen spiritual and temporal Lords were appointed for this purpose; of these the majority were actual counsellors of state, and the others,

\* Mr. Harey, the person implicated in this affair, has been supposed a member of the Commons, but he appears to have been a clergyman: Mr. Carte says, an agent of the Earl Marshal's, and probably one of that class of persons employed by the Nobles to bring the Commons into their designs. See also Mr. Christian's note in Blackstone's Commentaries, vol. i. p. 175.

† Ruffhead's Preface to Statutes.



most probably, closely connected with the Court. It appears, indeed, that the King allowed only such as he chose, to be appointed for that service\*. This was usually the first proceeding after the declaration of the purposes of the Parliament was made by the Chancellor or Steward of the Household: and it is not unfrequently found, that in the most difficult parts of the charge, as with regard to advice respecting war or peace, and other matters, they reported, after consideration, that they were unable to advise, and referred the business in question to the King and Council. It is not, therefore, very apparent, what advantage the Commons did really derive from the presence of this committee of Peers. As to the matters formally announced for their consideration, it may not be improbable, that the Barons sometimes favoured such nugatory results, in order that affairs might be left to be determined by the King's Council: and it is not otherwise than consistent with the known relative situations of the parties to suppose, that the Commons were influenced as often as it suited the purposes of the Peers, in the objects of many of their petitions. This is, indeed, upon the whole, as evident as any such circumstance can be, upon grounds short of direct proof, which is hardly to be expected.



The encouragement thitherto given to petitions in Parliament, had very much increased their number; their objects, also, were extended, and, as distributive justice was still very ill administered, many petitions from individuals concerning private rights, found their way to Parliament, and thereby some redress was probably obtained. This appears to have given rise to a petition of the Commons to the King, that a Parliament should be held every year, *for the redress of delays in suits, &c.*; but the answer was, “It shall be as it hath been used.”

In noticing the parliamentary occurrences of this, and other early reigns, it is impossible to avoid adverting to some proceedings, which, as they seem to arise out of the factions and excesses of the times, might be considered unfit to be fairly adduced, either as precedents, or that kind of constitutional occurrence which may with propriety be argued upon; but such a rule, although in general the result of just principles, could not be applied strictly in the prosecution of the objects of this inquiry. It is the peculiar characteristic, and, indeed, the advantage of our Constitution, to have been framed upon the experience of many ages, and of every kind of political emergency. Succeeding generations have respectively adopted

\* 1 Richard II. Cott. Ab. p. 163.



or improved, the best parts of what was before altogether new, or but little tried; and thus many of our great constitutional maxims seem to have arisen from what, in the infancy and unsettled times of the fabric, was innovation. I am led into this reflection from what it is impossible to overlook in considering the history of this reign, namely, the little regard, or rather the total disregard, paid to the statute of treasons; for in the heavy parliamentary judgments produced under Richard II. by the excessive and factious turbulence of the time, that law seems to have been intentionally (although not expressly and formally) set aside.

In the case of the Archbishop of York, and other high personages accused, it was declared, that the charges against them were to be determined by the course of Parliament, and not by the usual legal manner of proceeding\*. Under this provision, when assented to by the King, a considerable number of persons, of whom only three were Peers, were adjudged to all the pains and forfeitures of treason, contrary to the before-

\* In 11. Richard II. it was resolved, "*That all weightie matters in the same Parliament which should be after moved, touching the Peeres of the land, ought to be determined and judged, and discussed by the cours, of the Parliament, and not by the civill law, nor yet by the common laws of the land, used in other more courts of the realm.*" —Cotton's Abridgment.



mentioned statute, which has been so much applauded. The power of dispensing with the law was claimed, indeed, as a right or franchise of Parliament; for pretences of some kind were never wanting in those times for any purpose; but in this case, not only the statute of treason was laid aside, but there was *no evidence or proof of the charges adduced*\*; and this was manifestly

\* There is no point in which our modern condition is more improved than in the important security we enjoy, from the regular administration of justice. The trial by jury was of old a trial by *witnesses alone*, which witnesses the jury were; they were not sworn to give a verdict according to the evidence they should hear in court, but to give it according to their own knowledge, and for this purpose they were necessarily taken from the neighbourhood where the cause arose. During the practice of such a custom, the not calling evidence before the Parliament, may appear the less extraordinary; they might, perhaps, consider themselves as an inquest or jury.

The reason for unanimity in a jury, seems difficult to be, in all respects, satisfactorily shown; it has been supposed, that it might tend to prevent the effects of resentment to which a part of the jury might be exposed from the Crown or powerful individuals, and in early times, such policy might be intelligible. Lord Lyttelton says, "It is *easier* to see the necessity of a jury's being unanimous, when summoned *as witnesses*, than as judges to determine upon evidence given by others." This unanimity required of old, under very different circumstances, seems to have been accidentally retained.

It is little noticed how and when, the inestimable addition of "*viva voce*" evidence upon oath in court, on both sides, was obtained in our trials. This was not effectually practised until the time of Edward VI. and his successor; and it gained an immense advantage to the subject.—*Reeves's History of the Law*



the act of a faction in power, exercising vengeance on their political opponents. Their measures created a general and just alarm, which they found it advisable in some degree to soothe; and lest such violent, cruel, and illegal measures should be retaliated upon themselves, it was declared in Parliament, that what had been done, should not be drawn into precedent thereafter, and the judges were restrained from adjudging other acts to be treason, than such as were so before according to law \*.

By the example of such extraordinary interpositions, it would seem that a particular "law and usage in Parliament" has been established:—not indeed copying the violent and unjustifiable parts of the transactions just mentioned, but moderating and reserving an extraordinary recourse upon new and high occasions, unfit, from their national importance, to be judged by general regulations, and wisely reserved for remedy, to a jurisdiction where it is most likely to be suitably and effectually applied.

During the turbulent and factious times of Richard II. the Commons, being made the in-

\* It is to be noticed in the proceedings here alluded to, that these judicial sentences were pronounced in the presence, and, therefore, with the presumed concurrence of the King, which it is supposed was necessary to give them validity.—*Carte*.



struments of all the parties which successively agitated the state, came very naturally to assume and acquire an increase of weight and importance. Being alternately employed by the leaders of the parties of the nobles, and by the Court; their petitions were easily procured either for the support of prerogative, or for the reduction of it, even in matters affecting the domestic establishment of the Prince\*. In those times, this was much less a legitimate object of control by Parliament than now; and upon one occasion, the Commons were carried so far into a forgetfulness of their situation, and even into mistakes of facts, that they asked for accounts which had never before been submitted to their inspection†, and they subjected themselves to being accused of stating what was untrue, and seems proved to be so‡. In their interference with the household, they found themselves so much in the wrong, as to see it expedient to make a very humble submission, as hath been already mentioned§.

That the Parliaments, in this reign, acted, generally, under influence, is sufficiently apparent

\* Cott. Ab. pp. 338 and 342, and Preface.

† Ibid, and Tyrrell. ‡ Cotton's Abridgment.

§ They had complained of the expenses of the King's house, and of too great a resort of bishops and ladies in the Court.—Cotton's Abridgment, p. 361.



from the accounts of our historians. Whether the influence was exerted in the proceedings for the elections of that body, or used on its assembly, to determine the conduct of the members, is not very material, as its existence and operation were manifest \*. The proceedings in the end of this reign, against the King, evince rather a command than an influence over the Commons, by a confederacy of great men among the Peers : in that assembly only one person, Merks, Bishop of Carlisle, had courage to lift his voice in favour of his Sovereign, undoubtedly injured in the highest, although he had erred only in a venial degree †. The Commons in this Parliament had been changed, but the Peers summoned to it, were, except one, the same individual forty-nine persons, who had before gone every length with the King, yet, on this occasion, deserted him, and, in fact, deposed him. Transactions of this kind, however, became common in the succeeding times.

It was charged against this Prince, that he had caused the sheriffs to return knights of the shires, named by himself, and without elections. It is im-

\* Preface to Cotton's Abridgment, p. 26. Carte, vol. ii. pp. 577, 585. Tyrrell, vol. v. pp. 936, 959, 966, 979. Rapin. Hume.

† This prelate was, by an immediate order of the usurper, seized and imprisoned by the Earl Marshal.—*Carte*.



possible to conceive that such a measure should be attempted, without attaching a corresponding degree of consequence to the functions of the persons to be returned; yet the Commons were, notwithstanding, in various respects, but little advanced in consideration; it appears, that on the meeting of Parliament, they waited to be *called in* by the Lord Steward, who took their names from the returns, and the King had the power of discharging those whom he chose to excuse, and ordered others to be elected in their room \*. But the circumstance which particularly marks real weight and importance, namely, an effective participation in the legislative power, appears still to have been wanting. In addition to what has been already noticed in this respect, we find, that several of the acts of the seventeenth of this reign were passed without the assent of the Commons †, and of this no notice seems to have been taken by them ‡.

\* Elysinge, Cotton's Abridgment.

† Cotton's Abridgment, and Gurdon on Parliaments.

‡ The essential form of an Act of Parliament, according to Sir F. Coke, is said to require, that it be declared to be enacted by the King, Lords, and Commons, specifically, or by such general terms as may be presumed to imply the sanction of these three parts of the Legislature; but if only two of the authorities are named, it would preclude a supposition of the third being included, and would affect the validity of the act. This seems a very proper rule, notwithstanding an important remark upon its possible consequences, in a Report to Parli-



By the accession of Henry IV. the means of farther advancement in political weight were afforded to the House of Commons. The general circumstances of the age were improving, and by the expansion of commerce, the benefits of property had been extended. The diffusion of general knowledge was indeed still retarded, until the invention

ment upon the Public Records, in which an instance is produced, where a law, passed with every necessary formality, might, by the application of Sir Edward Coke's rule, be invalidated. It seems, however, impossible for Judges to guard against any such irregularity as appears in that case, which, it is to be hoped, is a singular one. It is the Act of 1 Edward VI. c. 5, prohibiting the sending of horses out of the kingdom without license; it appears in the printed Statutes, and in the original roll, to be enacted by the King and the Commons only, yet, according to the Lords' Journals, it had clearly the proper assent of that House.—*Report on the State of the Records, by the Right Hon. George Rose, printed by order of the House of Commons, July 1800, p. 45.*

The two Acts to which I have before adverted, as passed without consent of the Commons, appear, in the printed Statutes, to have had such consent as was usual at the time; and the others, in the seventeenth of Richard II. are said, in the Statute Book, to be ordained by the King by the assent of his Parliament. Such penning, or printing, according to Sir E. Coke's rule, would be conclusive as to their authority, unless perhaps it were specially questioned. But the circumstance to which my observation particularly points, is, that these laws were passed and put in force at the time, notwithstanding the consent of the Commons was known to the whole Parliament to be wanting.—It does not appear what terms of enactment Sir E. Coke would admit to be valid in times when no Commons existed as legislators.



of printing should come into use ; but an amelioration of the condition of the lower orders is now discernible. There had been a petition in Parliament during the reign of Richard II. tending to check the means of improvement by education, which it is thereby evident was coming into practice ; the ungenerous attempt was frustrated by the negative of the Crown \* ; and thus the advantages of education, and instruction in the more useful arts, were secured for the general good.

In this reign, also, a period opens, during which, by the unhappy contentions for the Crown, the Commons House felt additional importance attaching to them, from the natural inducement which every competitor found, to fortify his pretensions by the expressed or implied acquiescence of that body.

The irregular consequences of an undue succession to the Crown began to operate early in the usurpation of the House of Lancaster.

\* This petition was in the fifteenth of Richard II. " That no villain of any Bishop, or other religious persons, do purchase any land, upon pain of forfeiting the same to the King, and that no villains do put their children in school." Answer: " The King will thereof be advised."—*Cotton's Abridgement*. There was also another against advantages allowed to villains in incorporated towns.



Henry IV. knowing well the insufficiency of his title \*, was obliged to be very tender and condescending in his conduct with the Commons; in order to obtain the supplies he was in want of. He yielded, or held out the appearance of consenting to their representations in regard to his household and privy council †. The value of points thus gained, seems to have been felt and improved to farther advantage ‡; offence was taken that the King should be made acquainted with the proceedings among the Commons relative to a subsidy, and hence it was claimed, that no part of them should be imparted to the King but by their Speaker §. In transactions of this nature, changes once effected, become precedents, and precedents repeated, grow into customs. An attempt was made to gain a delay in granting the supplies until the King had given his answers to their petitions; yet, although he saw the policy of granting some things, he appears upon this and other occasions, aware of the imprudence of conceding all that might be desired. The Commons, indeed, asked many things as by custom and right, to which they were not, in fact, so entitled. This was one of them, and they were

\* Sir Robert Cotton (Posthuma, p. 28) says of Henry IV. "Now succeedeth a man that first studied a popular party, as needing all to support his titles."

† Carte.

‡ Ruffhead, Preface to Statutes.

§ Cotton's Abridgment.



informed of their mis-statement of the practice, which the King did not choose to have altered\*. The House, in points of privilege, was in a state of dependence: it claimed franchises, but could not of itself vindicate the right to them. Upon the suggestion of an undue return for the county of Rutland in this reign, the course pursued was as before, a representation to the Crown, praying, that *the Lords might be ordered to examine the affair, and punish the default if found*†; and a person not chosen having been returned, the sheriff, after amending the return, was discharged from his office, committed, and adjudged to fine and ransom at the King's pleasure. This happened in the year before the first act that prescribed any specific regulations for elections, and appears to have been one of the species of undue proceedings which that statute (the seventh of Henry IV. c. 15) is particularly calculated to prevent. This act requires more than common attention; it contains two provisions of very different tendencies; one of them clearly sanctions a degree of looseness in the elective franchise for counties, which forms the foundation of a main point of popular argument with the reformers of the present day. This innovation was not practised long, before it was felt to be repugnant to

\* Cotton's Abridgment.

† Carte. Stanville's Election Reports.



the principles of election then understood, and was remedied accordingly. The other remarkable clause has been found a salutary regulation against undue and fabricated returns, and is continued, nearly in the original terms, in the concluding part of the writs to the sheriffs at this day \*

The ancient county-courts seem to have exercised a jurisdiction of the highest dignity, and most extensive authority. There were, of course, various courts under these supreme tribunals, and each was attended by different descriptions of suitors †, qualified for their respective functions; those of the county-court were composed of persons of the highest general description, namely, the great tenants *in capite*. But when the Conqueror severed the ecclesiastical from the civil jurisdictions, that court began to decline in dignity and all its consequences: and the change con-

\* “*Et electionem tuam in pleno comitatu tuo factam districte et aperte, &c.*” See the Statute. There has been for a long time a very prevalent kind of fashion (if I may so use the term), to extol certain old measures and regulations, as the effects of singular penetration and provident sagacity in *our ancestors*. We are somehow pleased on these occasions only to remember what happens to suit the present times, forgetting that which does not. *Our ancestors*, is a term of large import; and any indiscriminate praise bestowed on them for *those parts of their institutions only* which more mature experience retains, seems not founded upon a just view of their various actions.

† Bibliotheca Politica,



tinued gradually to increase, as the course of the affairs originally transacted in the county-courts was diverted into different channels.

When the tenures *in capite* came to be so much divided, that the holders of the smaller parcels of them, could neither conveniently nor fitly be summoned to attend the national assembly, together with the more ancient and larger tenants, the choice or appointment of those who were to appear as representatives for this body was naturally to take place in a meeting of the same description of persons ; and this most obviously was the county-court. There is no reason to suppose this order of men either very numerous, or their possessions as yet very small in the reign of Edward I. But from that time to the accession of Henry IV. property, from the natural course of things, must have flowed into many more hands, and the numerical majority of suitors at the county-courts was probably composed of small proprietors. Hence arose a decline in the respectability of the attendance ; for although of old, none owed suit and service there but tenants in chief of the Crown, and all others, holding of mesne lords, owed suit at the court of their lords ; yet when the business in the county-courts was reduced to matters of little consequence, and the complexion of the suitors was much changed, the better class became negligent



in their personal attendance \*, they sent proxies. These were freeholders under them, and by reason of a thin appearance of the proper suitors, they occasionally performed the services of that superior order, whose duties and franchises in the county-courts came thus into the hands of inferior and more numerous classes of men. This innovation increased †, and in the time of Henry IV. seems to have extended to voting for the knights for Parliament. The new attendants at the county-courts are said to have been favourable to the usurpation, and Henry soon after confirmed the practice which he found useful in his government. He caused it to be enacted, that the elections should be made by *all who might be present at the county-court next after the delivery of the writ to the sheriff*, as will be seen by the act. In elections so conducted, arose the disorders, of which the Commons afterwards stated their complaint under Henry VI. and which furnished the grounds for the restriction and qualification then adopted at their suggestion.

It is to be remarked of the statute of Henry IV. that it differs in very essential respects from the

\* Caste, vol. ii. p. 699.

† Hume, vol. iii. p. 25. Sheriffs were also bribed by the superior orders of the suitors at the county-courts, not to summon them, but the lower classes, whereby these were driven to attendance there, and became parties in the elections of knights.—*Brady, Glossary, verbo, Prob. Homines, &c.*



petition which occasioned it ; but this was not unusual \*. The 'notable claim of the Commons, that no *part* of their petitions should be altered when granted, did not take place until the following reign ; all that was asked of Henry IV. was, that certain of the Commons should be present at the engrossing of the Parliament roll †, but this did not prevent the alteration in question, which deserves particular attention.

The petition relative to elections was as follows :  
 “ Item pur ce que les viscountz retournent chivalers du countees pur venir au Parliament nounduement esluz, que ordeine soit, que en toutes tielz briefs que issent desore hors de la chauncellerie direct as viscountz pur tielz chivalers estre pur venir au Parliament, soit continuiz, que proclamation soit fait en toutes les villes marches du countee du jour et leiu ou les ditz chivalers serront esluz xv jours devant le jour de election, *au fin que les sufficientz persones inhabitantz en le dit countee y puissent estre pur faire election susdit in due manere*, et qu’ les ditz viscountz qu’ ore sont et qu’ pur le temps serront soient serements, a se tenir, et executer sanz fraud ou affection de nulluy ‡.”

\* Ruffhead, Preface to Statutes.

† Ibid. and Cotton's Abridgment.

‡ Prynne, *Brev. Parl. Red.* p. 185, ex Rot. Parl. 7, 8 H. IV.



No answer<sup>a</sup> is mentioned in the authority, or in Cotton's Abridgment of the Records, but the act is clearly the proceeding upon it, and is as follows :

“ Item, Our Lord the King, at the grievous complaint of his Commons in this present Parliament, of the undue election of the knights of counties for the Parliament, which be sometime made of affection, of sheriffs, and otherwise against the form of the writs directed to the sheriff, to the great slander of the counties, and hindrance of the business of the commonalty in the said county ; our Sovereign Lord the King, willing therein to provide remedy, by the assent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, hath ordained and established, That from henceforth the elections of such knights shall be made in the form as followeth ; (that is to say) at the next county to be holden after the delivery of the writ of the Parliament, proclamation shall be made in the full county of the day and place of the Parliament, and *that all they that be there present, as well suitors duly summoned for the same cause, as other, shall attend to the election of the knights for the Parliament, and then in the full county they shall proceed to the election freely and indifferently, notwithstanding any request or commandment to the contrary ; and*



after that they be chosen, the names of the persons so chosen (be they present or absent) shall be written in an indenture under the seals of all them that did choose them, and tacked to the same writ of the Parliament, which indenture, so sealed and tacked, shall be holden for the sheriff's return of the said writ, touching the knights of the shires. And in the writs of the Parliament to be made hereafter, this clause shall be put : ' Et electionem tuam in pleno comitatu tuo factam distincte et aperte sub sigillo tuo et sigillis eorum qui electioni illi interfuerint nobis in Cancellaria nostra ad diem et locum in brevi contentos certifies indilate \*.' "

The petition is in substance : As sheriffs have returned knights of shires for Parliament, not duly elected, that it be ordained, that in all writs to be issued henceforward to sheriffs for such elections, it be provided, that proclamation be made in all market-towns of the county, *fifteen days before the day of election*, stating the day and place where the said knights will be chosen, *in order that sufficient persons, inhabitants in the county, may be able to be present to make the said election in a due manner*, and that all sheriffs be in future sworn to observe and execute this without fraud or affection of any one.

\* Statutes at large, 7 H. IV. c. 15.



The point to be effected was, that *sufficient persons should make the elections*; and for that purpose, that no election should be made without a certain previous public notice, which would enable persons of that description to attend\*. The act, however, directs the election to take place *at the next county-court after the delivery of the writ*. It not only does not direct notice to be given, but orders a course of proceeding, which, in many cases, must have absolutely prevented any notice being had, but by such persons as might before be summoned, or, perhaps for the purpose be otherwise brought to the place. Instead of securing the franchise of election to *sufficient persons*, it expressly puts it in the power of *every person who might be at the county-court to vote*. The only abuse it guards against, is that of a clandestine return; but this could be of no benefit while the election might be made by persons unqualified, unentitled, and according to the plain, but very comprehensive expression in the petition, *insufficient*.

It was thus, that for the purpose of supporting an illegitimate possessor of the crown, an innovation, which he found favourable to his views, was sanctioned and confirmed, contrary to the

\* It seems strange that the precaution of previous notice should not have been enforced until the present reign.—*See 25 George III. c. 84.*



*declared sense of the Commons* ; but it was not suffered to remain long\*. Henry IV. was a Prince of good political talents, and continued that regulation. His son and successor, a shining example of admirable carriage, guided in a high degree by manly and generous feelings peculiarly suited to his station, filled the throne, during a short reign, not only with popular, but with universal applause ; and, during that time, this matter continued without alteration ; but after the succession of Henry VI. in infancy, the deviation from the old practice in elections, was represented by the Commons, and their petition on that occasion was completely adopted, "*ad verbum*," for the act which was passed on the subject. This happened in the eighth of that reign, when the evils of the great number of electors of small property, which had been introduced, were complained of in a petition, of which the following is a free, but, I hope, not an incorrect translation : " The Commons in this Parliament pray, that as the elections

\* There was an act made upon a petition of the Commons in the eleventh of Henry IV. imposing a penalty on sheriffs not observing the preceding statute generally ; but it can only be considered as an additional part of the policy adopted by that Prince to confirm the undue system. There are, indeed, expressions in the petition, referring to ancient usage of elections, not otherwise to be found, and which can, of themselves, establish nothing against the well-known privilege of freeholders only to vote for knights of shires.



of knights of shires have in several counties been heretofore made by too great and excessive a number of their inhabitants, the greater part of whom have been persons of small or no property, but pretending to have as good votes for the elections as the most notable knights and esquires, whereby murders, riots, affrays, and discord will be occasioned among gentlemen and others, if a fit remedy be not provided against them: may it please your Majesty to consider the premises, and to ordain, by authority of this Parliament, that the elections of knights of shires in your realm of England, be henceforward made in every county by people dwelling therein, having severally freeholds to the value of forty shillings, at the least, clear after all deductions; and that those to be chosen, be inhabitants of the counties respectively, having the greatest number of votes as aforesaid, and be returned by the sheriffs, by indentures between them and the electors, sealed. And that the sheriffs have power to examine every elector upon oath, how much he may spend by the year; and that if any sheriff return knights to the Parliament contrary to the ordinance, the justices of assize may have authority to judge of it, and upon due conviction of any one, to pass sentence for a fine of one hundred pounds to the King, and imprisonment for one year. And that no knight, returned contrary to



this ordinance, shall be entitled to receive his wages. Provided always, that no person who cannot spend forty shillings by the year as aforesaid, be in any manner an elector of the knights for the Parliament; and that in all writs issued henceforward to sheriffs for such elections, notice be taken of these provisions \*."

The answer was, "*Let it be done as desired by the petition.*" And accordingly the petition was made (*mutatis mutandis*) the act of the eighth of Henry VI. c. 7, anno 1429. By this, the right of election was rescued from the temporary innovation that had been permitted, and, by the qualification prescribed, was secured to the description of persons considered fit for the trust.

Such is the history of the Qualification Act †. The outcry raised against it, is known to all who have read much of what has been published on

\* Prynne, *ut supra*, ex Rot. Parl. 8 Hen. VI. n. 39.

† It would hardly be supposed, that this act, framed on the express petition of the Commons, to remedy the bad effects of an innovation in elections, should be considered as it has been, by some persons more eager for any changes, than mindful of the true circumstances before them. It has been asserted, that no legal Parliament has sat since the passing of this act! —(See G. O. Paul's *very sensible Letter of the 6th of December 1782, to the Rev. C. Wyvill, in his Collection of Papers on Parliamentary Reform.*) I do not mean that Sir G. Paul makes this assertion, for, in adverting to it, he controverts it.



parliamentary reform. It is made a subject of complaint principally by those who contend for universal suffrage; but I will not remark farther upon these circumstances in this place, than by saying that the facts of the transaction lead distinctly to a contrary conclusion, namely, that the principles of representation and election in those days, were clearly against an indiscriminate franchise, and afford evident proof of a qualification by property being considered a true test of the right.

There had been a very severe law to enforce the due execution of the tenour of parliamentary writs by the sheriffs, who, it seems, were, in those days, the principal, if not the sole offenders; and the point to be guarded against was, misconduct on their part, whose power and duties were then very great, and infinitely more connected with, and under the control of, the Crown than now. But although the personal and pecuniary penalties were very heavy, they did not effectually prevent all abuses\*.

There was no law in that time respecting the elections for cities and boroughs excepting one,

\* The Act here alluded to is that of 11 Henry IV. c. 1. which contains the first specific penalty on the malversation of sheriffs in elections. According to Rapin, the King consented to it reluctantly.



whereby both the electors and elected were to be residents in the respective towns. It was thus that the regulations stood, both for counties and towns, at the period when we begin to have some authentic information of the manner of elections, and the number of electors.

It has been seen, that for the purpose of assessing an aid, otherwise than what was due by the feudal stipulations, the King, according to the Charter of John, was to cause his sheriffs to summon, *generally*, all the smaller tenants who held of him in chief, and when these became numerous, and of small possessions, they sent representatives. While the passing of taxes was the only purpose of their appearance, and before the numbers of those who chose them were either very great, or their condition in life very low, it will naturally be supposed, that there was the less occasion for regulations concerning the choice : but when the duties were enlarged, and the due discharge of them became important ; when these deputies were admitted parties in the Legislature, and when, at the same time, the condition of many of the electors had sunk below its original level, and new persons, not before entitled to the rights of election, had been admitted into the county-courts, it would be obviously desirable, in every point of view, to obtain the attendance of the most competent persons. Hence laws were framed to regulate the elections, and as it is im-



possible for low and ignorant people to discriminate and select men competent to high and arduous trusts, it was wise to restrain the interference of those who had not intelligence sufficient to direct their suffrages to persons of capacities adequate to the duties. When, at first, the exigencies of the Crown made it expedient to call upon towns for contributions in aid of the public service, the King's justices and other officers went round to adjust the assessments; and in effecting this, they doubtless communicated with the most respectable persons in the towns; afterwards, writs were sent to mayors, and the head officers of corporations; and where there were no incorporations, to the stewards or bailiffs of the lords of the towns. The chief persons of the places were always the returning officers; and if ever there were an age, and a structure of society, where, under a want of direct evidence, the general circumstances of men could lead to a safe conclusion, whether the superior, or the lower orders, were likely to preponderate in any institution of importance, it was the feudal period; for the clear predominant tendencies of its constitution were all peculiarly in favour of the higher orders. Upon the best consideration, therefore, of the circumstances of the age, confirmed (as will be seen) by the first returns that afford information on the subject, there is sufficient reason to be satisfied that the earliest elec-



tions for towns were made by the superior orders of their inhabitants \*. Dr. Brady indeed assures us, that in addition to the returns mentioned by him, and which will be found here, many others are extant, which show it, and even in places where, since the reign of James I. popular elections have sometimes prevailed †; the conclusion is besides corroborated by the circumstance that the elections for towns were not made the subject of regulation about the same time as those for counties, because it cannot be supposed that the county franchise should alone be regulated, and restricted to persons of superior consideration, if, at the same time, members could be returned from towns by the meaner class of inhabitants.

Of these and of county elections I shall proceed to give some examples from the time of Edward I. to the end of Henry VI. In the early part of this period, very little information seems to be afforded by the few returns that are found; in the fifteenth of Edward II. there is a return from Lincoln, which states the election to have been made by the mayor and common-

\* This opinion is materially strengthened by the little that is made out against it by Mr. Tyrrell, the zealous and able opposer of Dr. Brady.—*Tyrrell, App. vol. v. of Hist.* pp. 140, 201.

† Brady on Boroughs, p. 160.



ality. Under Edward III. we find a return from Southampton, by the mayor, bailiffs, and their fellow-burgesses; from Scarborough, by the bailiffs and community of burgesses; and the terms, "*assignavitur et constituimus*," are sometimes used instead of words denoting election. In the same reign, Yarmouth in Norfolk returns by the bailiffs and community, by the assent of the town; and the return for Derby appears to proceed on the choice of the burgesses. In the time of Richard II. few returns seem to remain; one from Scarborough is preserved, which states the same electors as just mentioned; and it appears that Shaftesbury returned by the mayor, constable, bailiff, and burgesses. During the reigns of the three successive Princes of the House of Lancaster, comprising the period from the year 1399 to 1461, we find as follows: In the eighth of Henry IV. the elections for the county and town of Cambridge were both made by the same persons, who are named in the return, and were in number no more than twelve; and, for the same Parliament, those for the county and town of Huntingdon were made by only eight persons, also named in the return. In the eleventh of Henry IV. the return for Reading was by the mayor and all the burgesses; also for Wallingford by the mayor and all the burgesses, amounting together, to twelve persons who are named. In the eighth of Henry IV. the elec-



tion for Bridgenorth was by the bailiffs, ten burgesses named, and several others. In the twelfth, the election for Bristol was by the mayor, and twenty-nine of the most discreet and most sufficient burgesses, also named; and for the county of Kent, and cities of Canterbury and Rochester, twelve persons named, said to be summoned for that purpose by the sheriff, made the elections. In the thirteenth, the election for the town of Derby was by six burgesses named, and many others of the community of the said borough. But one of the most extraordinary returns to be met with in this reign, is for the county of York, in the same year, whereby it appears, that the election was made by *seven attornies, or proxies*, of as many lords and great men named; and upon this, I should not omit to remark, that *four* of these great persons are to be found in the roll of Peers summoned to the same Parliament \*.

\* The indenture of return runs, "Inter Edmundum Samford Vic. Ebor. ex unâ parte, et

Willm. Holgate, Attornatum \* Radi Comit. Westmoreland.

Willm. de Kyllington, Attorn<sup>m</sup>. Lucie Comit. Kanc.

Willm. Hesham, Attorn<sup>m</sup>. \* Petri Domini de Malo Lacu.

Willm. de Barton, Attorn<sup>m</sup>. \* Willi Domini de Roos.

Robtum Euedale, Attorn<sup>m</sup>. \* Radi Baronis de Graystock.

Willum de Foston, Attorn<sup>m</sup>. Alexandri de Metham, Chivaler.

Henry de Preston, Attorn<sup>m</sup>. Henry de Percy, Chivaler.

Sectatorum Communium annuatim ad Com. Ebor. de sex sep-



In the first of Henry V. it appears by the return of the sheriff of Wilts, that the elections for the knights of that county, together with the citizens for New Sarum, and the burgesses for Wilton, Devizes, Malmesbury, Marlborough, Calne, and Old Sarum, were all made by twenty-six persons therein named. In the second of this reign, another extraordinary return occurs for the county of York, namely, by the attornies or proxies of *seven Lords*, and *one Lady*, and all those persons except *three* are summoned to the same Parliament as Peers †. In this year

timanis in sex septimanas, ex parte alterâ testatur, quod, &c.”—*Prynne, Brev. Parl. Red.*

The persons marked \*, are among those summoned as Peers to the same Parliament.—*Cotton's Abridgment.*

† The indenture of return runs, “Inter Willum Harington Vicomitem Ebor. ex unâ parte, et

Robtvm Mauleverer,	Attornatum	Henrici Archiepiscopi Ebor.
Willum Fentotes,	Attorn <sup>m</sup> .	* Radi Comitis Westmorland.
Willum Archer,	Attorn <sup>m</sup> .	* Jobis Comitis Mareshalli.
Willum Killington,	Attorn <sup>m</sup> .	* Henry Lestrop Chlr. Domini de Masham.
Willum Hesham,	Attorn <sup>m</sup> .	* Petri de Malo Lacu.
Willum Foston,	Attorn <sup>m</sup> .	Alexandri de Metham, Chlr.
Willum Housom,	Attorn <sup>m</sup> .	Roberti Roos.
Robtvm Barry,	Attorn <sup>m</sup> .	Margarete, <i>que fuit uxor</i> Henrici Vavasour, Chlr.
Robtvm Davison,	Attorn <sup>m</sup> .	Henrici Percy.
Secretorum Communium ad Com. Ebor. de sex septimanis in		



also, the election for Carlisle was made at the same time as that for the county of Cumberland, but by different persons, viz. the mayor, two bailiffs, and nine citizens; while the county election was made by fourteen other persons, all named. Upon the same occasion the elections for Kent, Canterbury, and Rochester, were made by twelve persons described as the four coroners of the county, and eight others, who seem to have been only a part of those who had been present in the county-court. The elections to this Parliament for the several towns in Dorsetshire and Somersetshire, that then sent members, were by four persons for each; those for the towns of Surry, as also for the county, were by nineteen electors for the whole; and twenty-four electors returned for the county of Sussex and its towns. In the fifth of this reign, the election for Bath was made at Ilchester by four citizens. In this and other years of this King, the elections for Bedford town were by twelve persons; for York city, by four-

sex septimanas, ex parte alterâ testatur, quod, &c."—*Prynne, Brev. Parl. Red.*

The persons marked \*, are among those summoned as Peers to the same Parliament.—*Cotton's Abridgment*. To which must be added the Archbishop of York, as Cotton gives only the roll of temporal Peers summoned.

These are remarkable instances of elections under the innovating statute of Henry IV.



teen; Hereford city by twelve; Yarmouth, in Norfolk, by eight; Lynn by twelve; Lincoln by twenty and others; Wallingford by seven; Cambridge town by twelve; Warwick county and town by eleven, and many others.\*

During the long reign of Henry VI. the elections for the places already mentioned, continued in most respects nearly the same, except as to the alterations occasioned, in the forms chiefly, by statute, an. 23, c. 14, of this King. To those specified, may be added, Devonshire and its towns then represented, by twenty-nine electors\*; Gloucester county and borough† by about thirty-one persons; Chichester by fourteen; Colchester by six; Dunwich by nine and others; Ipswich by sixteen, and many others; Huntingdon by twelve; Hull by twenty-five; Malden by six; Norwich by twenty-seven; Nottingham by fifteen; Newcastle upon Tyne by thirty-five; Oxford by the mayor, two others, and the whole community; Wycombe by seven; Worcester by fourteen; Cambridge by eight; which is mentioned in several returns to be ac-

\* Here no alteration appears, notwithstanding that statute seems to imply that the elections for towns should be made by the citizens and burgesses in their respective cities and boroughs.

† Gloucester was not then a city, being included in the see of Worcester.



*ording to its custom* ; Bristol by various numbers, as thirty-four, twenty-five, and twenty-one, and there they express the parties to be freeholders in the town (and county) of forty shillings and upwards \*

Such were the elections of those times ; and so they continued down to the seventeenth of Edward IV. beyond which the returns happen not to be preserved ; but notice will hereafter be taken of the next that are ascertained.

Although I mean to reserve the consideration of the plans of reform that have been urged, for a more advanced stage of these inquiries, it may not be improper here to make some reference to that of Sir F. Burdett. Having seen the rise of the Commons after the reign of John, and having, in order to show somewhat comprehensively, the progress of our general political condition, adverted to many, if not all of the leading circumstances affecting it, the old principles of the representative part of our Parliament may, I presume, be collected sufficiently to enable us to compare and judge, whether what is now held forth for popular adoption, is really, as its advocates call it, “ *a recurrence to those laws and*

\* These returns are chiefly to be found in Prynne's Brev. Parl. Red.



*that constitution, the departure from which has been the sole cause of that accumulation of evils which we now endure \*.*"

The accumulation of evils here assumed, I will pass by for the present without admitting it. But I then ask, at what period it is found that all "*householders, and others subject to direct taxation in support of the poor, the Church, and the State,*" were universally entitled to elect members of Parliament? I ask, in what reign was each county subdivided according to its taxed population, and each subdivision required to send one representative? I cannot discover the time, when the votes of these householders, and others, for members of Parliament, were taken by the parish-officers. And with respect to the duration of Parliament, I must also ask, what superior power the Parliaments in the time of Edward III. had above those of Charles I. or II. or that of William and Mary, or that under George I. to establish regulations concerning their being called, or any other alteration?

But Sir Francis Burdett told the House of Commons, that he took both *the laws and the constitution* for his guides in preparing the mea-

\* Sir F. Burdett's Speech. See extract in Appendix.



sure he proposed ; and thereby avoiding intricacies and impediments which have obstructed others in the same pursuit, he said he had found “ *the express image of the Constitution ;*” nay more, “ *the true Constitution* \*.” I do not know what laws are meant here as guides ; they cannot well be any of the one hundred and thirteen which he mentions, because they seem to be the stumbling-blocks alluded to, that have misled other reformers ; and the number stated, will, I believe, comprise all that any way refer to Parliament. The laws and constitution, therefore, which the patriotic Baronet has followed, must only be looked for previous to the reign of Edward III. In this view of the proposition, the conclusion would be, that the House of Commons is to revert—to be *restored*, to its state under Edward II. and before ; because, according to Sir F. Burdett, the practice that has obtained *since* the reigns of Edward II. or III. has been all deviation. The idea so universally entertained, that our Constitution has been *progressively improved*, if this doctrine be well founded, is a mistake, and all the regulations respecting Parliament must be cancelled ! They are all silly conceits, not improvements on the system, but aberrations from it. Let me not, however, risk

\* Speech ut supra.



a misrepresentation of the Honourable Baronet, when his own words are distinct, and at hand. The laws to which I have adverted, and all others respecting Parliament, are, according to him, “ *all pitiful substitutes for the Constitution\*!*” Such arguments might be deemed almost too absurd to require serious answers; but the House of Commons has listened to them, and condescended to divide upon a motion resulting from them. If the newspapers are to be believed, they are also not unfrequently told that they are not the constitutional representatives for Parliament; and how strenuously the same topics are disseminated among the people, every person may daily observe. What has been advanced amounts, indeed, to an assertion so incongruous and inconsistent in itself, that it might be disregarded as harmless; but when artfully connected with taxation, and with national calamities, when inculcated on the heedless multitude, whose passions are at the same time insidiously excited, by ascribing a supposed accumulation of evils to this source, the danger must be evident and alarming. But Sir F. Burdett, in introducing his propositions, has noticed some political occurrences of a comparatively late date: although his sweeping ideas of the Constitution might seem to make any such late reference rather unnecessary,

\* Speech ut supra.



yet he states that something was done at the æra of the Revolution to the prejudice of the Crown, and injury of the Constitution; he says that the seeds of the rotten borough system were then wofully scattered over the country. It might almost be thought he meant, that a great number of the least populous towns, or old decayed boroughs, were then empowered to send representatives; or that the three branches of the Legislature had concurred in some improper restrictions of the former prerogatives of the Crown; to some such meaning, indeed, his observations do certainly tend; and considerable stress seems to be laid on a supposed change, either in the constitution of parliamentary boroughs, or in the royal prerogative, or both, which is ascribed to that time. After denouncing *all* the laws respecting Parliament as unconstitutional, it might be supposed there were little occasion to open a fresh and partial quarrel with the events of so late a period, and which are, besides, very favourably considered, by almost every one, in constitutional points of view. But in order to avoid the confusion into which the investigation of these circumstances in this place, would lead, I shall resume the retrospect of the progress of the House of Commons to full authority and power, and then consider by what new means, at the Revolution, the Parliament became injuriously affected.



The first petition of the Commons that it is material to notice with reference to legislation, was under Edward III. and it appears, as has been already mentioned, to have arisen out of jealousy of the clergy; being calculated to obstruct their particular influence, rather than to advance a right in the Commons to be assenters to all laws. Under Henry IV. the subject was incidentally adverted to in an answer from the King to a petition, where it had not been mentioned\*. But under Henry V. there was a petition upon this subject of a direct and specific import; it was as follows:

“Oure Soverain, your humble and trewe leiges that ben come for the Comens of your lond, by seeckyn onto your rigt wissenesse. Tha soo as hit hath evere be thair libertie and freedom, that thair should be no statut, no lawe be made of lasse than they yaf thereto thair assent, consideringe that the cōē† of your lond, the whiche that is,

\* “The Commons on the third of November pray, that for as much as they were not made privie to the judgment aforesaid, that no record be made to charge, or to make them parties thereunto; whereunto the Archbishop of Canterbury, by the King's commandment, answered, that the Commons were only petitioners, and that all judgments appertain to the King, and to the Lords, unless it were in statutes, grants, subsidies, or such like, the which order the King would from that time to be observed.”—*Cott. Ab. 1 H. IV. n. 80.*

† Sic in orig.



and euer hath be a membre of your Parlement, ben as well *assentors* as petitioners; that fro this tyme forward, by compleynte of the Comens of any mischief, axhinge remedie by mouthe of their Speker for the Comens, othier else by petition witen, that ther nevere be no lawe made thereuppon and engrosed as statut and lawe, nother be addicions, nother by diminucions, by no maner of terme ne termes, the whiche that sholde chaunge the sentence and the intente axhed by the Speaker mouthe, or the petitions bifore said, yeven up in wrytyng by the manere forsaid, withoute assent of the foresaid Comens, consyderinge, oure Soveraig Lord, that it is not in no wyse the intente of oure Comens, gif hit be so that they axhe you by spekyng or wrytyng too thynges or thre, or as manye as theym lust, but that ever it stonde yn the fredom of your high regalie, to graunte which of thoo that you luste, and to wernne the remanent †."

The assertion in this petition, that the Commons had ever been assenters, is not to be taken in an unqualified sense: it was usual with them in their petitions to assume largely, and there are many instances on record of their general and particular misstatements; in the present case the position is contrary to very sufficient evidence, as

\* Deny or refuse

† Ruffhead's Preface to Statutes at large.



will have been observed in the course of these pages. After this time, however,\* the privilege claimed seems to have settled into right; yet it can hardly be considered as effected altogether by this petition; for the claim had been long in preparation; but the answer on this occasion seems to have determined a point which before was neither sanctioned by uniform practice, nor acknowledged in any form of record. It was now acceded to in terms upon which I shall forbear to remark. The answer to the petition was,

“ The Kyng, of his grace especial graunteth yat fro hensforth, nothing be doon to the petitions of his Commune, yat be contrarye of hir askyng, wharby they shuld be boarde without thair assent, sayyng alwey to our selfe Lord his reall prerogatif, to graunt or denve what man lust of their petitions and askynges aforesaid.”

When an acknowledged effective power, or *vetto*, in legislation is intrusted to any number of persons, it becomes a matter of no small importance in the political economy of a state, to regulate the introduction of members into that assembly. This observation, although pointing principally to the electing franchise, will yet include another consideration, namely, the appointment of those permanently intrusted with

\* Ut supra.



this high office. The Crown has certainly enjoyed this important prerogative in all ages since the Conquest ; whether the title was by barony, by tenancy in chief, by writ of summons, or by appointment as electors ; all the original authorities have, in the main, emanated from the monarch \*. With regard to the representatives for towns, or rather the towns that sent representatives, the discretion exercised by the sheriffs certainly forms an extraordinary anomaly in our constitutional history. It is one of the many proofs that the system has been perfected by gradual adjustments : in the time of Edward IV. this point seems to have verged near to a regulation ; it is said that the sheriffs, after that reign, acted regularly in issuing writs to all cities and boroughs that had been lately accustomed to send members. There is the greater reason to think that the subject was then better noticed, as it was by Edward IV.

\* It might, perhaps, be questioned at this day, whether the King's writ to a county, or charter to a town, would be competent authority for the introduction of additional members to the Commons House ? The best arguments on the subject would probably turn upon the effect of those additions in both cases, which have been made by parliamentary authority ; yet if the maxim be true, that the prerogative cannot be abridged, but by express terms of an Act of Parliament, necessarily including the direct assent of the Crown ; it would, as I think, be difficult to maintain, that the right had been affected beyond the particular instances that appear ; for no argument by implication would be good against a right so guarded.



that the first privilege of representation by charter was granted \* ; before this, no charter expressed any provision to that effect ; the general directions in the writs being the only instruction the sheriffs received, as to causing returns to be made from towns † . From this period, till the twentieth of Charles II. the privilege was conferred by the Crown, but not exclusively ; for although no alteration in the number of representatives took place under Henry VII. yet under Henry VIII. who exercised as great a share of power as any King of England ever enjoyed, the counties

\* The first town impriviledged by charter to send to parliament, was Wenlock, the privilege given, is said to be only for one representative. How the place returns two, does not appear.—*Willis, Not. Parl.*

† This is stated only as to practice ; but it may be doubted whether the discretion was so soon completely understood to be gone from the sheriffs, because we find long after, namely, at the accession of James I. that in his proclamation concerning the choice of the members of his first Parliament, which he intended as a precedent for all succeeding occasions, the sheriffs are enjoined not to direct precepts to ancient boroughs in their counties, that are so far decayed as not to contain sufficient residents to elect or be lawfully elected. As this was not accompanied with any farther instructions, the sheriffs (it would seem) might have omitted several according to their discretion ; for some there probably were that might be fairly considered as of the description meant by the proclamation. The general objections to some of James's numerous proclamations, will hardly be applied to this, which, indeed, contains many excellent directions for the choice of citizens and burgesses.



and towns of Wales and Cheshire sent members to the House of Commons by parliamentary authority, while the Prince at the same time, and his successors up to the time mentioned (of Charles II.), have also conferred the privilege by their royal grants. Henry exercised the right in a manner peculiarly unlimited; he called members from Calais in France, and from Berwick.

Under Charles II. the privilege was likewise conferred by the King and the Parliament respectively; and it happened on the occasion of the charter of Newark, which is the last addition to the English representation by charter, that the right of the Crown to grant that privilege was first questioned in the House of Commons; but upon a division, the prerogative was sustained by a considerable majority \*. It seems, indeed, al-

\* Blackstone, and Lord Glenbervie on Elections.—It has been supposed that the twenty-second article of the Union with Scotland, by precluding any addition to the English representation, affected consequently this part of the prerogative. There is no direct restriction contained in that instrument upon the number of English representatives, and I think it would be difficult to establish any clear inference to that effect, from the proceedings attending its discussion.—*Dejoe's History of the Union.*

Since the above was written, I have observed that the late Mr. Pitt entertained the opinion that the English representation is restricted by the Union.—*Speech in Parl. April 18, 1785.*

The question on the charter of Newark underwent consi-



ways to have comprehended that right ; but considering the power which the Crown possesses over the number of the other branch of Parliament, it is, perhaps, better to leave the question of representation to the united wisdom of the whole Legislature.

The House of Commons alone has, in some instances, restored by its vote, this right, where it had been before enjoyed and discontinued. In the eighteenth and twenty-first of James I. Ilchester, Pontefract, Agmondesham, Wendover, and Marlow, petitioned for that purpose, and succeeded. This, as well as the similar measures in 1640, formed part of the efforts of the faction of the Puritans. King James was rather averse to that increase of the members, but upon a favourable report from some of the Judges whose opinions he had desired, his objections were dropped, and writs were ordered by authority of the House. It appears, besides, pretty evidently, that these proceedings were more the workings of that great party than the desire of the inhabitants of the respective places. In the case of the three boroughs in the twenty-first of James, it is expressly said, that the petitions referred to the

derable discussion by several adjournments in 1671 and 1676, yet little that is material can be collected from what is preserved on the subject in Grey's Debates.



House were in the names of the boroughs, not by the actual deed of the burgesses or inhabitants; and among the arguments, it is urged for them, that they are contented to undergo the burden of wages to their members, or to choose such as would bear their own charges\*. The great increase to the representation under Elizabeth, James I. and Charles I. was evidently effected by the art, the industry, and at last by the overbearing violence of that numerous and powerful faction. Under Elizabeth it had partisans in the highest order and power in the State, unknown to the Queen, whose favour they enjoyed notwithstanding, and whereby some of those persons who were lords of towns, procured for them the privilege of sending members in the yet covered views of the sect.

Upon the accession of James, the operations of the party soon became more obvious in their tendency; but they could not be counteracted; they gained valuable privileges and power to the House of Commons, and corrected some great abuses, but they at last swallowed up the monarchy for a time †.

\* Willis, Not. Parl.

† It is unnecessary to stop to distinguish with precision, even if it were practicable, in what particular respects or periods, the Independents agreed with the Puritans, or how many of either party were republicans. Although in the various



To this faction is attributed the introduction of about forty-four boroughs into the House of Commons, upon party views\*, and by popular support. What that spirit will produce is too often and lamentably seen, in matters of the highest political import. It will be enough for me to remark here, that in the subject more particularly the object of these Reflections, 'this faction, when approaching the zenith of its power, and preparing farther instruments for its purpose, in the representative branch of 'the Legislature, declared in its committee of elections, "*that they were to be guided by the fitness of the persons, whatever was the desire of those who had the right of election.*" Upon this principle they purged the House of those that were unfriendly to their measures, replacing them with persons fit for their purposes†. By the proceedings of the House of Commons at that time, there is reason to believe, that in many towns, the elective privilege was changed from the corporation,

measures resorted to, the differences claimed by the apologists of each party are innumerable, still, I imagine, they agreed more than they differed; and were their measures well examined, they would be found, in the main, never out of a converging tendency to the mighty innovation produced. That some should at last affect to dissent, or, in reality, disapprove of the trial and execution of the King, is not to be wondered at; yet, without doubt, they had all contributed to raise the popular and military frenzy that produced it.

\* Carte.

† Carte. Lord Clarendon.



burgesses, and the like, to the inhabitants at large. It is here to be particularly remarked, how ill-founded the imputation is, which ascribes to "royal innovation," the gross abuse in the representation of the people, that arises from the towns which have been called to send members from the time of Henry VI. to Charles II.\* Besides the number above mentioned, it is to be observed, that Durham, Chester, Monmouth, and the twelve Welsh boroughs were added by acts of Parliament, and that Westminster and Liverpool are among the others complained of.

I have hitherto said but little of the privileges of the Commons' House, yet if any thing were wanting to prove the gradual rise and improvement of that assembly, a history of its acquired privileges would show it in the strongest light. No institution, *originally* of legislative authority, can be supposed, without a decided and well-protected independence. Had the first assembly of knights, citizens, and burgesses, been called together for the purpose of considering and sanctioning all new laws, they would have been invested with protections and privileges perhaps little short in extent, and certainly as well established as those they now enjoy, as it seems im-

\* First Address to the Electors of Great Britain by the Yorkshire Committee.



possible to conceive the due and effective discharge of a deliberative voice in legislation, without a full independence of speech and argument. Such was originally adopted in the American constitution; for there the assemblies entered immediately on the complete exercise of their legislative functions. Here the privileges were established by degrees, and nearly in proportion as the House approached and obtained a fuller participation in the supreme authority of legislation. It has been argued, that the Commons had always a right to be assenters; but how they claimed and enjoyed it, has been seen; and the last occasion under Henry V. which has been just mentioned, shows how little they understood it \*.

\* It seems originally to have been understood, when a petition of the Commons was simply granted, i. e. without any change or qualification expressed along with the King's assent, that the precise words of the petition were to form the law or statute; alterations were, however, introduced on various occasions: some perhaps perfectly expedient, and others probably not within the meaning of the petitioners at the time. To prevent such alterations was clearly the object of the petition. But under this petition, very desirable or necessary regulations might be lost to the Commons and the kingdom; for if a petition did not originally in all respects provide for what others might discover to be wanting, in strictness it was not to be altered;—if not granted completely and unaltered, it was not to be granted at all.

It is found very difficult now, even with great consideration, to provide for all the practical contingencies that occur in the application of legal rules. In



When they came into a true and effective exercise of this high trust, they gradually obtained the necessary privileges by their own power, for which they were at first entirely dependent on the Lords and the King.

Under Henry IV. they petitioned for better provision from arrest in these terms: "Item, pray the Commons, that whereas, according to the custom of the realm, the lords, knights, citizens, and burgesses, coming to your Parliament at your command, staying there, and returning to their countries, and their men, and their servants with them in the said Parliament,

In perusing the early accounts of parliamentary proceedings, the rare appearance of the transactions of the Barons' or Lords' House, seems not a little strange. There is very frequently nothing mentioned in Cotton's Records, but the petition of the Commons, and the answer of the King. This matter appears to me not improbably connected with a circumstance but little noticed, as far as I have observed, by our political or general historians, namely, the body of nobles known anciently under the designation of *the King's Council in Parliament*. It seems pretty clear, that this body, in later time, exercised its judicial authority under the name of the Court of Star Chamber, and in the original crude state of our political institutions, it may have been the channel for conveyance of the petitions of the Commons to the Crown: suggesting at the same time, either rejection or alteration according to circumstances; and thus, perhaps, the opinion of the Barons, or as many of them as took an active part in affairs, may have been comprehended in the answers of the Crown.



under your special protection and defence, and ought not for any debate, trespass,\* or other contract whatsoever, to be arrested, or any way imprisoned in the mean time; and now, so it is, that many such men coming to your Parliament, and others their men and servants, during the said Parliament, have been arrested by them, who had full knowledge that they so arrested were of the Parliament as aforesaid, in contempt of Your Majestie, great damage of the party, and delay of the business of the Parliament: May it please you to establish, that if any hereafter do arrest any such man coming to your Parliament as aforesaid, or any of their men or servants remaining with them in the said Parliament, or any thing attempt contrary to the custom, he shall make fine and ransome unto you, and render treble damages to the party grieved \*.

They here refer only to a custom which must be supposed to have been considered inadequate for their protection; but the King, although particularly interested in pleasing the Commons, thought otherwise, and no additional protection was granted †, the answer being shortly, “There is sufficient remedy for the cause.”

\* Elsyng, cap. 7.

† We are, besides, informed by a strenuous advocate for ancient rights in general, that in this reign the Commons enjoyed very large, and, *till then*, unusual powers.—*Ruffhead*.  
There



Towards the end of Henry VI.'s reign, the Speaker was arrested in an action brought against him by the Duke of York; and after representation was made to the Lords, he was continued in prison, and another Speaker chosen, notwithstanding that the opinion of the Judges, who were consulted, was in his favour. Although this case, under that and other circumstances of the period when it occurred, may be thought to prove rather than disprove the existence of certain privileges at that time, yet the firmness of their establishment, and the ideas entertained by the House upon the subject, will appear in a more doubtful light, when it is remembered that no notice was afterwards taken of that transaction. But whatever their privileges were, it was not for a long time after that they enjoyed them of their own authority; the custom was to receive the instrument which established the protection from the Lord Chancellor, upon application. This appears to have been the practice in the reign of Elizabeth †, notwithstanding the case of George

There is nothing in the petition, of the *privilege of the House*; they had enjoyed in a special manner the King's protection; and in complaining of an arrest, it was not stated as a branch of privilege, but a contempt of the King, damage to the party, and delay to the business in Parliament.

† In 1585 Richard Cook, burgess for Lymington, being served with a *subpœna* in Chancery, three members with the Serjeant were deputed to go to the Chancellor and Master of the Rolls, to state that *by the ancient liberties of the House,*



Perrers in the time of Henry VIII. which seems to have been strangely misrepresented \*. It was not until the reign of James I. that the House attained an undisputed power to punish those who should arrest its members.

The first material step obtained by the House for establishing its own jurisdiction in elections was in the reign of Elizabeth. This Princess, when occupied, with the convenient assistance of the Commons, in accomplishing her unjustifiable proceedings against the Queen of Scotland, allowed a declaration or resolution to be respecting

they were exempted from such arrest, to require that the member should be discharged from appearance, and that the privilege should be thereafter allowed. Sir Thomas Boleyn, the Lord Chancellor, answered, he thought the House had no such privilege, and would not allow of precedents in this respect, *says the House would also proceed in which had been allowed or established by precedent in the Court of Chancery.*

The House debated, and appointed a Committee to search for precedent, after which the farther consideration of the privilege was to be resumed: it does not, however, appear that any precedent was found, that the Committee made any report, or that the House took any farther steps to vindicate their alleged ancient privilege. It seems to have been the old and uniform practice of the House to claim, upon antecedent right, whatever they wanted to establish, but, in truth, their privileges and power were both *gradually acquired*.

Soon after the transaction just described, the privilege in question seems to have been obtained.—*Carte.*

\* Ibid. vol. iii. p. 164



this privilege to pass unnoticed, which, on common occasions, and judging from other occurrences of the kind in that reign, would not probably have been suffered \*. In the two succeeding reigns, the exclusive control of the House over elections was completely established.

But the unrestrained privilege of speech was not so easily attained to its present extent ; it involved a large question respecting the right of the Commons upon various important points.

The power of granting supplies, when the Crown was so frequently in need of them, was in itself a right of the utmost consequence ; upon this was engrafted a right to petition for redress of grievances or abuses, or for the regulation of various matters arising out of the changes and progress of society. With such an acknowledged power, it seems wonderful that the Commons did not rise much sooner to an effective participation in the Legislature, with all its high accompaniments ; yet Sir W. Blackstone admits, that they continued nearly two centuries in the condition of very humble petitioners ; and this slow acquirement of power and privilege, forms a proof of the very inferior state in which they were, when towns were first called upon to send depu-

\* *Carpe.*



ties. Undoubtedly the members for towns, which were strictly citizens and burgesses, resident in their respective places, could not, for a long time, be qualified for the arduous task of legislation. If, leaving personal independence aside, superior intelligence, general talents, and knowledge of the world, be desirable or requisite in persons who are to have power over very great affairs, it was fortunate and fit, that men, partaking so little in the qualifications necessary for understanding them, should also partake but little in their control; and, if the functions of general legislation require a correct knowledge of human nature in its ever-varying shapes and devices; if they require deep penetration, enlightened understanding, comprehensive views, with a firm decision of character, guided by prudence, probity, and unbiassed justice; if, as far as may be obtained, such ought to be the qualifications of legislators, it is not to be regretted that that power accrued to the Commons, only a short time before the better sort of persons began to make a seat in Parliament an object of ambition\*.

20\* It appears that no citizen or burgess ever attained the honourable distinction of presiding in the House of Commons, before the second Parliament of Queen Mary, anno 1554, when Robert Brooke, Recorder of London, and one of its representatives, was chosen.—*Willis, Not. Parl.*



It is true, indeed, that for a considerable period, the general state of society afforded but few men approaching to the characters most satisfactorily to be intrusted with the important office; yet it was desirable to take the best that could be had, and to prevent, as far as possible, its falling into the least competent hands. There was, however, a natural tendency to some degree of popular participation in the authority of Parliament, which is to be esteemed a fortunate circumstance; for no society has, perhaps, ever existed, where fair and equal laws have been framed by any one order and description of persons: a body of men of the same class, and with the same interests, are too much affected by their natural prejudices, to be free from partial views and partial conduct, and would, therefore, be unfit to be alone intrusted with the legislative power.

We have seen that in the time of Richard II. and the succeeding reign, statutes could not only be made without the consent of the Commons, but were even enforced long afterwards, although their dissent was recorded \*; but looking at the

\* The statute of 5 Richard II. st. 2, c. 5, (see p. 188), must always have been held good, since the legislative authority was required to repeal it.—1 *Edward VI.* c. 12. sec. 3. There seems a mistake of the press in the body of the Act, which the fact and the marginal notice show.



legislative power exercised after the petition in the second of Henry V. that has been given, and taking the spirit of that document in a liberal interpretation, together with the general scope of petitions about that time, it might be concluded, not only that nothing should be enacted without the consent of the Commons, but that they were under no restraint or limitation in the objects of their petitions. They do not, for instance, appear to be precluded from petitioning that the succession to the Crown should be regulated, in order to prevent confusion, or worse disorders, from contested pretensions; and there was no prohibition against representing any defects in the laws respecting religion, that might affect their constituents. But this will be found too extensive a meaning to be put on the petition and answer; or if this latitude was allowed at first, it was not so well established as to be binding on all succeeding Princes, if it did not suit their purposes, or, in other words, if they were not pleased to admit it; for it is found almost two hundred years afterwards, under Queen Elizabeth, that the House was forcibly prevented from entertaining discussions on these subjects; and *Sir Edward Coke*, when Speaker, declared, upon the occasion of some propositions, respecting ecclesiastical grievances, that he was commanded by Her Majesty not to read any Bill, if such should be ex-



bibited, about state or ecclesiastical matters \*. This Speaker, however, had demanded and ob-

\* Carte — Sir Edward Coke seems a favourite authority with Sir F. Burdett, who quotes in his Speech an observation of Coke's upon Magna Carta, which has no connexion, that I can see, with his proposed reform. When the Petition of Right was under consideration, an addition to it was proposed by the Lords, in these words: "*We present this our humble petition to Your Majesty, with the care not only of preserving our own liberties, but with due regard to leave entire that sovereign power wherewith Your Majesty is trusted for the protection, safety, and happiness of the people.*" Sir Edward was one of the most zealous promoters of the Petition; and arguing against the expression, "sovereign power," stated it to be unparliamentary, and tending to weaken Magna Carta, and other statutes; he then said, "*Magna Carta is such a fellow, that he will have no sovereign.*" Now, there was nothing connected with representation in what was passing at the time, and Magna Carta contains no provision whatever concerning it; yet Sir F. Burdett (*see Appendix*) says, "*This question is so completely decided by Magna Carta, which, as Lord Coke says, 'is such a fellow that he will bear no equal' (sovereign), so strongly fortified by all our constitutional laws, that no inferior authority can be required, &c.*" What question is meant here, I am altogether unable to conjecture; but whether it is the general question of parliamentary reform, or a question on any of the arguments tried to support it, the reference seems equally inapplicable.

The career of Sir Edward Coke was marked with considerable variety both in public and private life. I have not observed, that in any capacity he ever disapproved of the representation as it stood in his time, which, it may be said, differed in little from its present state, unless in the number of places represented. There seems, indeed, reason to think that he completely approved of what Sir Francis thinks so repugnant.



tained, in nearly the customary terms, the freedom of speech, among the other claims usually made at the opening of a Parliament. And, it is farther to be remarked, that during the time he filled the chair, several members were committed by the Queen, for introducing motions for regulating the succession to the Crown; yet the liberation of these members was not claimed, nor the authority that imprisoned them questioned at the time.

Notwithstanding all this, the House of Commons, through the powerful struggles of the

to the Constitution. The town of Harwich had in early times sent representatives to Parliament, but had intermitted nearly 300 years: Sir Edward Coke is said to have obtained a renewal of the privilege by charter from James I. and there the return is made by the mayor, on the election of the corporation, consisting of thirty-one persons.—*Rushworth's Hist. Collect. Gen. Hist. Diet. Willis, Not. Parl.*

It is not a little extraordinary that Sir Edward Coke, and many other persons who had been in Queen Elizabeth's Parliaments, should, under James and Charles, be parties in asserting the *antiquity* and *inheritance* of privileges which were not then claimed or suffered to be used. Coke was a great searcher into ancient records, which show, distinctly the original want of power and privilege in the Commons, and their gradual acquirement of them; he had filled the offices of Solicitor and Attorney General to Queen Elizabeth, in whose law council, the practice seems to have been very different from that which he lived to inculcate, when acting so strenuously and laudably in support of the Petition of Right.



Puritans after the accession of James, and by a general concurrence of circumstances, at last acquired all the authority and jurisdiction they claimed.

It may now be proper to inquire, whether, when so many important external advantages were gained by the House, any change or improvement had taken place internally: I mean in the persons or characters of the members. It is to be recollected, that by the usage of early periods, and afterwards by statute, the members for towns were really natural citizens and burgesses of the respective places where they were chosen; but in the reign of Edward IV. we find, among the members returned, many names likely to be of a different description of persons †, and the law

\* In the reign of James, some privileges were warmly contested, and by the Commons claimed an inheritance, which is peculiarly extraordinary after what had been submitted to under Elizabeth, and before. The greatest violence seems to have been used on the part of the King, who abrogated their proceedings, and committed their members: one of which was Sir Edward Coke. But what will be considered of the state of the question of *right* and *inheritance*, when it is observed, that not a word of complaint was made either then or in the following Parliament, although the last act of the King in the struggle was the tearing out of their Journal, by his own hand, the protestation or resolution they had inserted concerning their privileges generally, and particularly the freedom of speech.—*Richardson*, vol. i. p. 53.

† Wills, Not. Parl.



in that respect had fallen into general disuse, in the time of Henry VIII. This change was greatly for the advantage of the Legislature; persons of better information, more independent, and capable of more liberal views, would be returned in the places of the better class of shopkeepers, which, under the original practice, must have been the universal description of town-members, with the exception of a few great trading ports. Hence, in proportion as a superior order of men appeared as members, it must follow, that additional weight would attach to the transactions and decisions of the House.

It would be tedious, and seems unnecessary, to detail the various concurring circumstances by which the state of society in general, and particularly that of the middling orders, was progressively improving about this period. The division of landed property had increased, in consequence of the facility given to alienations by a statute of Henry VII. of which the operation was farther enlarged under his successor \*; the order of yeomen came also to be conspicuous, and a general expansion of society and its powers, is observable. The introduction of the art of printing was alone a matter of the utmost importance; its consequences are of a value and effect, not to be es-

\* Lord Erskine's Dissertation.



timated on the bare mention of the circumstance ; but requiring a very extensive scope of reflection before we recognise the innumerable advantages it has conferred over the preceding state of society.

Under so great a concurrence of favourable circumstances, the popular branch of the Legislature necessarily acquired a very substantial accession of power : laws were no longer made at the instance and request of the Commons ; but it became constitutionally requisite to have their sanction and authority. Petitions were also addressed to them ; the prayer, however, for the remedy or provision desired, did not at first refer to a power in the House to grant it \*. This, like all other customs concerning that body, shows a recent authority, of which the commencement can generally be traced, and the progress and establishment may almost always be distinctly marked.

Although the general and legislative power of the Commons had thus greatly increased at the period of Henry VIII. yet the weight and authority of the Crown, when in tolerably able hands, possessed an almost irresistible influence on many of their proceedings. It is true, that some of the unconstitutional attempts in that

\* Gurdon on Parliaments.



reign, appeared to be stopped by the checks arising from the Commons House ; but the forbearance shown on these occasions are, I think, in some degree, to be attributed to the good sense and understanding (of the business as it were) of the ministers employed. Cardinal Wolsey went great lengths in order to procure large supplies ; but he seems to have acted wisely in desisting, when he saw the firmness with which the House was disposed to adhere to its opinion. Money was not unfrequently raised by particular commissions, and as benevolences ; but when it seemed strongly opposed, ministers knew where to stop, and could even recede before they had gone too far. There is great art and great use in such prudent management ; and much management and address must indeed have been employed to obtain the extraordinary and contradictory statutes which then took place. But the unparalleled abuse of the Legislature in this reign (and on some other occasions), is not to be imputed in reproach to the Commons alone. The most striking improprieties of measures are frequently overlooked most easily by those who are closely concerned in them ; and the habits of ministers engaged in the service of an impetuous, passionate, and arbitrary Prince, might carry them through incongruities, which the gravity and deliberation of Parliament ought to prevent being ultimately adopted ; and above all, it was to be



supposed, that the superior intelligence of the Lords would have rendered impossible their concurrence in the unprecedented acts of that time, which disgrace the annals of the kingdom. That the Peers, in its high and independent station, should lend itself to legalize such flagrant injustice, and caprices so derogatory and mean, is beyond measure more astonishing than the concurrence of the Commons \*.

It is not, however, required by my subject, to dwell upon these transactions farther than as to the concern which the House of Commons had in them; and what that concern may show of independence or influence, competence or inadequacy of talents, for a due discharge of their proper functions. As the history of those times must be familiar to every body; and as I shall throw under one head, the farther consideration of the influence that has in later periods affected the conduct of the lower House, it seems unnecessary here to enlarge on the subject †.

\* Dr. Henry says there is not a protest or dissent to be met with in the Lords' Journals during this reign.

† All the extraordinary laws passed by Parliament under Henry VIII. are, perhaps, not generally recollected; some of them are certainly curious. Treason was extended to *thought and belief*, and there was authority to examine as to the same upon oath; this applied to the validity of the King's marriages with Anne, and Jane, and Catherine; and if any should say,



I shall now proceed to conclude what remains to be stated relative to the right of election in towns.

If the principle of the representation of that part of the community were grounded, as some authors contend \*, upon the holding of land *in capite* of the Crown it would follow that the elections must have been in the hands of the corporation, where any existed, because it is not to be supposed that a grant from the Crown would

"they were not bound to take them though *à titre de science, and stuffy thereon*," it was treason. The marriage with Anne of Cleves was afterward pronounced void, and it was declared treason by word or deed to advise against it to be good; and when Catherine was arrested, the most ridiculous enactment took place, to protect the honour of any future Queen and guard His Majesty against deception. On two occasions, when the King had borrowed money, on given securities, the same were all declared void, and, in one of the cases, those persons who had recovered payments in part, were obliged to refund them into the Exchequer. In ecclesiastical matters, the injustice and absurdities surprised, if possible, the others. At one time, commissioners were appointed to choose, from the many tenets then promiscuously held, a form of religion for the kingdom; but before much progress was made in this, an Act passed (in 1541), to *satisfy what they should hereafter determine* with the King's consent, if not contrary to law. (Some of these Statutes are not printed.) These are only parts of the proceedings of that reign; they were so extraordinary as to give occasion to a foreign gentleman to observe, that "*those who were against the Pope were burnt, and those who were for him were hanged.*"—Reeve. History of the Law.—Burnett's History of the Reformation.

\* Dr. Brady and G. Stuart, Lord Erskine, and others.



be otherwise than to a select body, most probably the principal inhabitants; and in such, doubtless, the trust or right of electing representatives would be vested. If land was granted, it was conveyed to those who formed the corporation; if the receipt of the different tolls, stallage, and other dues of the lords, was transferred in consideration of a certain annual rent, it was to the members of the corporation; and being intrusted with the general interests of the inhabitants at large, there is sufficient reason to conclude, even if more direct evidence were wanting, that these persons were also empowered to choose representatives for the Parliament. From these considerations, therefore, it must follow, that, according to the system here assumed, the privilege going with the tenure, would of course merge in the corporation; and when, besides this, we look to the evidence of the returns themselves, the situation of the elective franchise will admit of no doubt.

There were, however, towns called to send to Parliament, where there was no appearance of any incorporation, and which did not hold of the Crown \*. How the authors to whom I have al-

\* Of this last description were Arundel and Coventry, which held of the Earls of Arundel and Chester; Bath, Wells, Beverly, Bodmin, and Lynne, which held of the Church; and many others might be named.—*Tynell*, vol. iii. *App.* p. 64.



luded, reconcile this fact to their hypothesis, I have not been able to discover. But whether the supposition, that representation was exclusively attached to holding in chief of the Crown, be admitted; or whether, as is much more probable, the sending of deputies to Parliament was imposed originally on those towns which at the time were best able to contribute to the exigencies of the Exchequer, it can in neither case be conceived, that a general right of suffrage existed either theoretically or practically in the lower orders; it would be contrary to all the analogies, and bearings of society in the times to which it would refer. If any thing like a popular election were to be supposed, I should look for it in towns where no corporation existed; but if a free choice could be exercised, it would most probably be found in the return of a select body of electors empowered and protected by the immunities of a charter\*.

\* A corporation might be variously authorized as to the admission of new members; and, although it might possibly be numerous, yet it could, perhaps, never be said to be a popular body. In towns sending to Parliament, but where no corporation existed, the election or nomination of deputies took place in the court of the lord; and there, all were parties who owed suit: here would probably be comprehended all the "*probi homines*" of the place; and the *probi homines* were generally the superior persons of an order; men might move into that situation by their own advancement, as if a man became enabled to take or build a tenement of a certain description within the liberty, he might thereby owe service at the Lords' Court, and he said to be a party to the election of



Places sending deputies by writs directed to their bailiffs, constables, or stewards, were demesne or burgage towns of the Crown, or some great subject, whose respective officers, under these denominations, being the chief persons in authority, had charge of the elections or returns to the writs.

Having already produced various examples of the manner of election, and the quality of electors, from such returns as convey any evidence respecting them; and as that source of information fails after the seventeenth of Edward IV. I am now to state a circumstance in the time of Henry VIII. which, in my apprehension, will enable us to judge satisfactorily of what was, in that age, considered the constitutional position of the elective franchise in towns.

One of the Acts of Parliament in Henry's reign which regulates the government of Wales, provides also for the representation of that prin-

a deputy to go to Parliament. But the main interest and property of the town were in the lord, and the inhabitants so much under his control, that although the election might apparently be made in an assembly so far popular as now stated, yet it will not be conceived, if the lord or his steward had desired a particular person to be returned, that the suitors in his court would have ventured to propose any other.—see the state of Barnstaple, p. 167.



city, together with the county and town of Monmouth: in the clause for that purpose, there is no particular direction given, how or by whom the elections of members are to be made; it is merely declared that they are to be chosen in the same manner as in other places; the words of the clause for Wales are, “ And that for this present Parliament, and all other Parliaments to be holden and kept for this realm, one knight shall be chosen and elected to the same Parliament, for every of the shires of Brecknock, Radnor, Montgomery and Denbigh, and for every other shire within the said country or dominion of Wales; and for every borough being a shire-town within the said country or dominion of Wales, except the shire-town of the aforesaid county of Merioneth, one burgess; and *the election to be in the like manner, form and order, as knights and burgesses of the Parliament be elected and chosen in other shires of this realm*; and that the knights &c. \*”

Here then is a plain, free, unembarrassed reference to the customary manner of election throughout the kingdom in all respects; and it only remains to see by what denomination of persons, the members created by this act are elected.

\* Stat. 27 H. VIII. c. 26. s. 29. The clause for Monmouth is similar.



It is by the burgesses of the respective towns \* ; and I apprehend, that an inhabitant who is not a burgess has no vote †. We may from hence decidedly infer, that such was the general course of elections in that age. The conclusion, if it stood in need of corroboration, is strengthened by the case of the county palatine and city of Chester, whose inhabitants had been in early

\* Willis, Not. Parl.

† There seems to be one exception to this, namely, the borough of Flint, where, by the decision of a committee, the right of election has been declared to be in the inhabitants at large. The grounds of that decision seem questionable: for, notwithstanding it is said to have been upon evidence, that such was the custom, yet the Act of 35 H. VIII. c. 11. for regulating the payment of the wages of the members for Wales, seems to explain, that although inhabitants of towns were chargeable to these wages, yet the *burgesses only* were to be summoned to the elections.—*Section 3.*

In Haverford West the election is by the freemen and inhabitants at large, but it returns under a different act, where there is no reference to the manner of other places, and where it is merely said, that the town shall find a burgess.—*Stat. 34, 35 H. VIII. c. 26. s. 111.*

If the House of Commons would allow the rights of election to be decided by a court of law, the franchise would be settled on a footing, probably every way better than as now practised, and much of the expense of candidates might be saved. The political ingenuity of committees, in eluding, varying, and explaining the force of last decisions, seems more fertile and successful, than the legal efforts of counsel would probably be, when corrected and embodied by the disinterested sagacity and consistency of the Judges.



times taxed by a kind of Parliament of their own ; they were, in the same reign, admitted to send representatives to Parliament, to be elected under a similar reference to the custom in the county of Lancaster, and other counties and cities \* ; and the right of election there (the city of Chester) is confined to the members of the corporation.

The change in the right of election in many boroughs, which took place after the period of Henry VIII. by the efforts of the Puritan faction to obtain a majority in the House of Commons, has already been in some measure noticed. The religious principles and popular objects embraced by that party had gained them an universal ascendancy among the lower orders ; and it was for that reason, and not upon a principle of right, that they endeavoured to extend in many places the elective franchise to their numerous votaries ; for, from their active zeal, the return of persons devoted to the common cause was certain. Their measures, therefore, as to elections, were clearly grounded upon party principles ; and when they affected to purge the House of Commons of monopolists, the same characteristic of their proceedings was also eminently conspicuous. The existence of the numberless monopolies of those

\* Stat. 34, 35 H. VIII. c. 13.



days was in itself an intolerable grievance; and the appearance of the holders of them in the House of Commons might well be deemed highly exceptionable; but it is clear, that the Puritans sought only the exclusion of those members of this description who were hostile to their measures, while others who would vote and act with them, were left unmolested\*. The principles,

\* Sir H. Mildmay and Mr. L. Whitaker are expressly mentioned, as being notoriously engaged in monopolies, similar to those for which other members were expelled; and yet they were allowed to retain their seats, because they were staunch friends to the party, and ultimately went great lengths with them.—*Cante*.

There is, notwithstanding, some consolation to be derived amidst the many lamentable proceedings of those days, in the additional weight and power acquired by the House of Commons; which, when temperately and wisely used, is productive of the most salutary effects. If the popular influence in the Legislature was then insufficient for a due equilibrium of the political balance, the deficiency was supplied; but being suddenly and copiously heaped into the scale, the preponderance of the democratic arm became too powerful, and the excessive vibration deranged and destroyed the constitution for a time. This leaves a pregnant example of the necessity of caution and delicacy in changes of such high concern. And, when we contemplate the memorable events of those days, and the power from which they sprung, the important consequences of a prudent selection of the members of the House of Commons will be undeniable. What description of electors are likely to exercise a sound and beneficial discretion in their elections, cannot therefore be too well considered, under whatever circumstances any change might be deemed expedient.



therefore, which governed the proceedings of this faction in the elections and qualifications of members, depended on their being inclined or adverse to their objects in Parliament, and not on the manner of their elections, or on the rights of the electors\*.

Since the reign of Henry VIII. about ninety-one towns have been called to send members to Parliament; of these more than half had never exercised the privilege before, some had made one or a few returns, and some, although summoned, had made none; but neither a right, nor an expediency for their finding representatives would, perhaps, be established by those circumstances at so great a distance of time.

It was in the reign of Edward VI. and subsequently, that a very great proportion of the towns, now called rotten boroughs, were inprivileged; and if Sir F. Burdett had assumed that period, instead of the Revolution, as the epoch of the foundation of what he calls the rotten borough system, he would have taken rather a more correct date; for although he may mean that bribery and influence became more prevalent after the Revolution than before, yet many of the voters to be bribed and influenced, began to be created at the time now mentioned. The city of Westmin-

\* See p. 235.



ster, and several towns, probably of good account, were also first represented in that reign \*

The village † of Aylesbury was incorporated by Queen Mary, and received the privilege of sending two members to Parliament, to be chosen by ten aldermen, and twelve capital burgesses, who composed the corporation. Yet in the short space of seventeen years after the first election under that charter, a return was made *by the widow of the lord and owner of the town* ‡ : and

\* The first Parliament of Edward VI. received, among other additions, two members for Westminster; the next was increased by sixteen representatives for eight Cornish boroughs (besides six before represented). In four years afterwards, one parish in Yorkshire was enabled to send four members, namely, for Aldborough and Boroughbridge.

† So called in the Patent.

‡ That return was as follows :

“ To all Christian people to whom this present writing shall come. I Dame Dorothy Packington widow, late wife of Sir John Packington Knight, lord and owner of the town of Aylesbury, sendeth greeting. Know ye, me the said Dame Dorothy Packington, to have chosen, named and appointed my trusty and well-beloved Thomas Lichfeld and George Burden Esquires, to be my burgesses of my said town of Aylesbury. And whatsoever the said Thomas and George, burgesses, shall do in the civice of the Queen's Highness in that present Parliament to be holden at Westminster the eighth day of May next ensuing the date hereof, I the same Dame Dorothy Packington do ratifie and approve to be my own act, as fully and w. o'ly as if I were or might be present there, In witness wher of, to the 4 presents I have set my seal, the fourth day of May, in the fourteenth year of the reign of our



this was twice repeated without being questioned; so little was the right of election regarded upon some occasions. This borough seems one of those where the elective franchise was changed by the Puritans, from the corporation to the inhabitants at large, in the third of Charles I.

I shall now close this part of my subject, by observing, that Newark and Durham, the two towns on which the privilege of representation was last conferred, happen to exercise it by different rights of election: in the former place, the return is by royal charter, in the corporation and inhabitants at large; while in the latter, under an act of the Legislature, the mayor, aldermen, and freemen alone, are invested with the power of choosing the representatives\*.

Sovereign Lady Elizabeth, by the grace of God, of England, France, and Ireland, Queen, Defender of the Faith, &c."—*Brady on Boroughs, App. No. 23.*

It appears that some of the Packington family were long returned here; but, in the last Parliament of Charles I. when many changes were effected for the purposes of the party, new members were put in for this place; and they, among others so introduced, amounting to no inconsiderable number, are found among the *Judges* that condemned the King.

Sir John Packington had the management of the borough in the time of Queen Anne, and appears to have directed the constables who refused Ashby's vote; upon which a remarkable contest (Ashby and White) ensued.—*Somerville's Reign of Anne.*

\* Willis, Not. Parl. Stat. 25 Ch. II. c. 9.



We will now see the various additions made to the representative body, as they successively took place. ,

It was the policy of Edward I. to direct his writs to different towns on different occasions, apparently for the double purpose of dividing the expenses \*, and obtaining a more general understanding and agreement upon the new method of taxation, which was the better to be effected, by ranging almost all the considerable places as parties, by turns, to the measure.

I have before stated, that in the assembly of the twenty-sixth of Edward I. deputies appeared from about ninety towns ; and at the end of Edward III. the number was not much altered ; for, although some were discontinued, others had been called ; and the increase, even up to the accession of Henry V. was inconsiderable, as the whole of the towns then making regular returns, may be said to be about ninety-four ; and of counties there were only thirty-seven. Under Henry VI. there were additions from twelve places, of which five had not sent before ; some of these towns, it may be conjectured, either had no great population, or were in a state of decay ; I allude particularly to Gatton, which

\* Carte.



seems to have returned first in the twenty-ninth of this reign, anno 1450; and in the thirty-third of Henry VIII. only about ninety years after, it appears there was but one inhabitant\*; it is stated to have increased in the last century to about half a score of houses†. Henry was a weak Prince, and it might be easy for any of his courtiers to induce the sheriffs to send writs to their towns for purposes of aggrandizement or interest, which they might have in view. In the time of Edward IV. there was an increase of three new places, and a restoration of one that had been summoned before. During the three succeeding reigns, no alteration took place. Under Henry VIII. six towns were added, and fourteen counties of which twelve were Welsh, and among the towns, it is remarkable to find Calais, in France‡.

Thus at the end of the reign of Henry VIII. the House of Commons consisted of representatives from fifty-one counties, and one hundred and twenty-seven towns, sending in all three hundred and thirty-three members. After this, the additions are very considerable in each of the

\* Willis, Not. Parl. from an indenture he had seen in the Rolls Chapel.

† Ibid. and Bib. Pol. Tyrrell.

‡ This place continued represented only so long as the Parliament of 2, 3, of Philip and Mary.



five succeeding reigns, as landed property came to be more divided, and the advantages of commerce were widely increasing. About twenty-two towns were added under Edward VI. of which nine had on some former, although not late occasions, been represented: and in the time of Philip and Mary, fourteen, almost all newly created, sent members. In the course of Elizabeth's long reign, about thirty towns obtained the privilege of representation, of which only six had ever before exercised it. Under James I. eight more of the old towns were restored, and four others imprivileged, besides the two Universities; a circumstance that does great credit to that Prince, notwithstanding the imputations not sparingly thrown, by many writers, upon his ill taste in literature. In the time of Charles I. nine old towns that had auciently returned members, were restored. The county and city of Durham, with the borough of Newark, were added in the reign of Charles II.

Such, in a few words, has been the progress of the English representation to the state in which it now stands: I shall subjoin a concise table of it, which will give a more ready and comprehensive view of the whole \*.



One of the principal topics of grievance with the advocates for reform, arises from the influence under which the House of Commons is, on some occasions, considered to act. Under this supposition an appeal is made from the present times, to some former period, when the constitution of that body is alleged to have been more free, and the exercise of its functions more independent. But no distinct epoch is referred to, where the model of integrity is to be found, and we are left without any guide to direct us where to look for it: the people are, however, told, that the representation is come into a state of corrupt degeneracy—fallen under an injurious and unconstitutional influence, and that nothing will save the country from impending ruin, but recurrence to a supposed original and genuine purity.

If an abstract review of the state of Parliament, as to independence or influence, had been the sole object of these Reflections, it had not been necessary to have gone back to any distant periods: but in order to have a comprehensive knowledge of the whole political condition of the country, I have thought it expedient to trace, even before the first appearance of the institution. In the progress of this investigation we have seen the representative branch of the Legislature arise, but the beneficial effects were gradual and slow; for while the colossal fabric of the feudal aristo-



cracy stood unimpaired, its impression was irresistible, and its privileges were incompatible with the existence of practical freedom in the middling classes of society. It has been supposed, that some vestiges of liberty remained among the holders of soccage tenures, after the Conquest; but although the socmen were *free*, in the ancient acceptation, as to their persons, still it may well be questioned whether any degree of freedom, as now understood, was known by them, or could be preserved in their tenures \*

\* In adverting to this subject, I have already stated, that many tradesmen were among the number of persons *not free*. Authorities might also be adduced to show the very low state of inhabitants of towns generally. I have likewise said that socmen were so ill circumstanced, as to find it their interest to give up their holdings, and be content with the terms of feudal vassalage. Before the Conquest, this class of men must have occupied but a mean station, as we find it affirmed, that under Edward the Confessor, the valuation of their lives was the same as those of villains.—*Dahymple on Feudal Tenures*, p. 25. Their condition towards the end of Henry III.'s reign, may be estimated from a document printed by Dr. Brady (*Gen. Pref. to his History*, p. 64), which ascertains the state of those belonging to the priory of Spalding. The certain services are numerous and heavy: among those of an undefined, and consequently arbitrary nature, we find that they owed an aid once in a year to their lord, saving their livelihood; that they could not sell or give their land, nor maintain a title concerning their soccage, without license of their lord; and that they likewise owed him a fine, for leave for their daughters to marry: under restraints like these and others, very little liberty could subsist.



If it were necessary to trace the channel, in which a supposed ancient right of legislation had been preserved and transmitted to the people of this country, and which might be said to begin to reappear in the times of our first Edwards, it would be found in a certain tenure of land: but that tenure is of the highest nature. If a tribe of warlike people possessed themselves of a country, the chief or king parcelled it among his followers, retaining for himself a sufficient portion to support a mighty superiority: and the principal persons under him, having the greatest possessions by his gift, became his counsellors, ministers, and servants; their descendants, together with the valorous and fortunate adventurers in other conquests, when similarly rewarded, became the settled advisers of the Prince\*. Personal property was little regarded, and continued so for a long time; the possession of land alone, by donation, from the Sovereign, carried an acknowledged right to assist in the great Councils. Afterwards, when by diminution in value, and increase in numbers, such tenures, with their accompanying rights, were diffused into the mass of society, the middle orders of men were advanced, as they became possessed of this privileged acquirement. It was not, probably, until this expansion of property had made considerable progress, that the condition of the humble soccage tenant might be blended with the smaller freeholders, as of some-

\* Lord Chancellor West on the Origin, &c. of Peerage.



what similar consideration. Under this state of things, we have found that representatives from counties were first sent; and deputies from towns being also called to agree upon taxes, they were, after some time, joined together, not, however, immediately as legislators, or advisers of the Crown; for, notwithstanding the privilege attached to tenure *in capite*, such was long the overpowering force of the aristocracy, that no small holder of land could, it would seem, effectually partake with them in so high a function.

The Commons, being accustomed, as has been shown, to consent to taxes: cherished by the Princes who filled the throne *de jure*, and by those who acquired it *de facto*; courted by the other contending parties in the state, we have seen gradually obtain consistency, power, and privilege; but during a very great part of the period passed in progressive efforts for these objects, no real or rational liberty is to be observed; the freedom of our early ages, so vaguely referred to, and so vainly boasted, has been well characterized, as consisting in little more than *an incapacity of submitting to be governed*; it cannot then be under such political arrangements, that we are to look for an independent, or an uninfluenced House of Commons. One of the authors whom I have had occasion to cite, and who is zealous in contending for an ancient state of power in the



Commons, does distinctly admit (although it controverts other parts of his argument), that they were, in the original and early period of their institution, intended as a pillar for the prerogative, rather than a protecting shield for the people. That learned authority says, “ *If we consider the influence the King had in demesne towns, he might as well have been absolute with a Parliament as without; and the Parliament at first, so far as it consisted of Commons, was intended as a support to prerogative\*.*”

Thus it appears, that the Crown could command a majority of the representatives of towns; they all, in fact, belonged to the Crown originally, but many were granted to great men, and some were endowed with corporate immunities; those not incorporated, but remaining in demesne, or in burgage tenure of their respective grantees as lords, were under the same control from them as that exercised by the Crown; and hence an influence was vested in many potent individuals, similar to that retained by the Crown. Many of the early incorporations seem, besides, to have been burdened with a reserve of the lord's approbation in the choice or admission of their principal officers†, and thus an ascendant in the corporate body would remain to the patron.



But while the deputies from towns were allowed only to agree upon the quantum of their contributions to the public exigencies, and to present their petitions, little influence was probably exerted, because, if they had refused to agree, they might have been talliated separately, as before they were sent for to meet together, and there was no difficulty in rejecting their petitions. If we consider, besides, how much of spontaneous and habitual deference is in this age paid to the possessors of rank and fortune, remembering at the same time, the happy independence now enjoyed, through the equitable administration of justice, it will readily appear, that in a society moving under the universal impression of the feudal obligations, the natural deference to the aristocracy must have been beyond measure greater \*.

We have seen that by means of instructions to the sheriffs in the writs, the Crown could re-

\* There is an instance of this in the record of a complaint to the King upon the conduct of the Sheriff of Huntingdonshire, in an election in 29 Henry VI. where there seems to have been a contest. A majority of that county state, that they gave their votes to two gentlemen of the King's household, thinking them the most likely persons to expedite and assent to the aids that might be necessary for His Majesty and the kingdom.—*Prynne, Brev. Parl. Red.* The numbers that appeared were 124 against 47.



strain the election of particular descriptions of persons: and thus, practisers in the law were at one time excluded. Edward III. could, also name in the writs, the parties he wished to be returned; and it does not appear to have been thought unconstitutional. But under Richard II. a direct interference through the sheriffs is mentioned by several historians, which seems to have excited opposition; about that time the contending factions began to court the co-operation of the Commons, and influence was without doubt frequently exerted. That the adversary of this unfortunate Prince should impute such interference to him, in the charges on which his deposition was apparently grounded, cannot be of much weight, as those charges were never proved; and whether the accusation was true or false as to Richard, it is sufficiently ascertained, that previous to the 7th of Henry IV. the practice was not uncommon, as by a clause in the acts of that year \*, it was thought necessary to enjoin the sheriffs to observe the directions therein given for a free and indifferent election, “ notwithstanding any request or *commandment* to the contrary.”

In this and the two following reigns, the instances of interference on the part of the Crown

\* C. 14 of Stat. 7 H. IV.



in elections, are rather more frequently noticed \*, than under the succeeding Princes ; but there can be little doubt that influence was often resorted to, and with success. It was not, perhaps, altogether for the purpose of obtaining temporary supplies that the selection of members was then considered of importance ; the Princes of the House of Lancasser had a higher stake to contend for ; and thinking it prudent to conciliate the support of all ranks, they condescended, it may be said, to seek the countenance of the House of Commons, although it advanced, as has been before observed, the political importance of that body. When, after the separate taxation of towns was first discontinued, and then forbidden by the King's assent to a petition to that effect, the obtaining of supplies had become on some occasions difficult ; the object was effected in a very different and very extraordinary manner. In that age, the Crown possessed the power not only of keeping the House sitting, but all the members might be obliged to attend in their places ; and as the functions to be exercised had little of the flattering consequence now attached to members of Parliament, and their constituents often found the wages burdensome † ; a long attendance was every way so inconvenient, that the supply, not otherwise intended, was some-

\* Whitelock on the Parliamentary Writ, vol. i. p. 383—4 ; and vol. ii. p. 365, 367. Cott. Ab. Preface.



times acceded to, rather than suffer an additional protraction of a session \*; and the expedient was successfully and frequently practised.

Sir William Blackstone has drawn a parallel †, not a little in detail, between the ancient and modern influence of the Crown; and notwithstanding he seems to have used some efforts of political sagacity, in aid of legal precision, in the enumeration of the different heads upon which an increase and diminution have arisen, yet it may be doubted, whether each side of the question has received an equal degree of attention. In that estimate, the points of abatement of the old prerogative are given in a catalogue barely, without any remarks upon their respective degrees of importance; while the account of what has been acquired by the Crown in influence and power, seems somewhat studiously amplified. There is one of the branches of lost prerogative which appears to me as deserving particular notice; but the learned Judge merely puts it down in his list, under the bare title of “The Abolition of military Tenures.” This might, by an inadvertent reader, be supposed to have no reference whatever to civil concerns; and as a standing army was not then usual in times of peace, it might also be passed over

\* Carte, and Stowe.

† Comment. vol. i. p. 433.



as of little importance even in a military sense ; yet, in fact, the act of Parliament here alluded to, did abolish and destroy *a legal source of influence, of power and of oppression, infinitely beyond any later acquired means of patronage* which this celebrated author has very carefully detailed. I allude to that feudal prerogative which vested in the Crown the wardship and marriage of the minors of its numerous tenants. By this prerogative, the person, education; whole estate, and concerns, as also the marriage, of all minor heirs and heiresses, were given to the power, profit, and control of the superior lord; and from this disgraceful bondage there was, even in later times, but a small portion of the land of this country exempted. The tenants that held of meane lords were also subjected to the will of the Crown during the nonage of their chiefs, and thus the wardship of the greatest and the lowest might at pleasure be made an object of common sordid market profit,—a mean of gratifying the most capricious resentment; or it might afford occasion for the kindest and most beneficial act of friendship. The ramifications of this overspreading influence were boundless: every head of a family who can make his property the rule of his expense, is now perfectly independent; but of old, the ever-impending hand of death might bring the family of the most virtuous and best deserv-



ing, or most elevated member of society into the power of a political enemy.

It cannot well be imagined that so ready, and, as it were, legitimate means of influence, as this prerogative afforded, were not applied to parliamentary purposes; there is, indeed, sufficient proof that they were. It appears, that the Lord Treasurer Burleigh, also Master of the Court of Wards, wrote to the sheriff of Surrey, requiring him to suspend the return of burgesses for Gatton until he should send instructions: the borough was probably then depopulated, and one Mr. Copley used to nominate the burgesses; this gentleman was dead, and his heir, being within age, was the Queen's (Elizabeth) ward. In ten days after, there is another letter from his Lordship requiring the sheriff to return Edward Browne, instead of F. Bacon, who with Thomas Bishopp had been nominated \*. It is almost superfluous

\* Harleian Catalogue, vol. i. p. 416, No. 703, &c. In this most valuable collection of ancient documents, and among the Cottonian MSS. there are frequent evidences of interference in elections by courtiers and peers; and of the disposal of wardships there are also many notices. Even so lately as the time of James I. they were objects of attraction to the greatest personages, as appears by a letter from Queen Anne to the Marquis of Buckingham, written for the purpose of obtaining the wardship of George Saville, grandson of Sir George Saville. — *Ibid* vol. ii. 6986.

Henry III. thinking himself peculiarly happy in his second



to add, that Browne and Bishopp were the mem-

marriage, with Eleanor of Provence, had many young ladies brought from that country, whom His Majesty caused to be married to his wards.—*Andrews's History*. Wardship and marriage seem to have been disposed of, perfectly *ad libitum*. Celestia, wife of Richard, son of Colbern, gave x l. for the wardship of *her own* children with their land, and that she might not be married, except to her good liking. William, Bishop of Elv, gave ccxx marks, that he might have the custody of S. de Beauchamp, and marry him to whom he pleased. William de St. Marie Church gave d marks to have the wardship of R. son of R. Fitzharding, with his whole inheritance of knight's fees, donations of churches, and marriages of women; and that he might marry him to one of his [William's] kin-women. B. de Multon gave c marks to have the custody of the land and heir of Lambert de Ybetoft, and that he might marry Lambert's wife to whom he pleased, but without disparagement. J. Earl of Lincoln, fined mmm marks, to have the marriage of Richard de Clare for his eldest daughter. G. de Marvil gave x marks of silver, that the King would give him leave to take a wife. Lucia, Countess of Chester, gave d mark of silver, that she might not be married within five years. C. de, wife of Hugh Peverc, gave xii l. x s. that she might marry whom she pleased. R. Fitz-William gave c marks fine, that he might marry Margery, late wife of Nicholas Corbet, who held of the King in chief, and that Margery might be married to him. And Alice Bertram gave xx marks, that she might not be compelled to marry. These transactions were in the reign of Edward I. and before.—*Madox, apud Stuart, View of Society*.

In later times, there is an account of the character of Lord Burleigh, or rather a panegyric on his conduct as Master of the Ward, which represents, that he kept but few wardships, either for himself, or to give; and in illustrating that part of his prais, the writer observes, that of a number between sixty



lers returned \*. Nominations, however, like this give no adequate view of the extent of political influence which the right of wardship and marriage of heirs, laid open to the Crown; and when we reflect on the indirect means afforded through the superior tenant, upon their numerous vassals, and the frequent contingency of the event, this engine of influence, and of its management, must have been immensely superior to

any other which he granted in a year. "He never took benefit but of two or three, or, perhaps, four in a year, or very few more." That in two years and a half he gave in about 200 wards, of which 180 were conferred on comers, and that twenty only remained in that space of time for him to give and sell, upon which, it is added, he could not take much. That from thence it might be judged what he could make yearly, above the ordinary fees. That people measured his profits rather by what he might have made, than by what he really did make: for if he had been covetous or corrupt, he would not have given away so many, or sold so few: as "he was not bound to give any man a ward, worth five hundred or a thousand pounds, freely, or to let one have a ward for an hundred, worth six hundred pounds, without a better recompence to himself." He is also stated to have "preferred natural mothers, before all others, to the custodie of their children, if they weare not to be touched with any notable exception."

What this Matter of the Wards, or any other, might seem a notable exception to a natural mother, does not appear. Such is the account of one who had been twenty five years of his household, and who writes professedly in his praise.—*Pech, Desiderata Curiosa.*

\* Willis, Not. Parl.



effect to any power that has accrued since its abolition. But no idea of the ancient power of the Crown, or the dependance of the people, will be competently formed, unless the unlimited discretionary authority of the Courts of Star Chamber and High Commission, and the power of martial law, be understood. Nothing that Judge Blackstone has said, or that any one can say of the influence arising from the collection and expen-<sup>ture</sup> of the revenue, immense as it is, or from the command of the army, or from any other modern source, can outweigh the extent of undefined power exercised by the Crown by means of these jurisdictions. The learned writer just cited, mentions the Riot Act as a vast acquisition of force to the Crown \*; but it may well be doubted if it is equal to the command in cases of riot or disturbance in preceding times †, by the powers to which I have adverted.

In the short reigns of Edward VI. and Philip and Mary, there seems greater unconstitutional interference in elections, than in the more extended period of Elizabeth. A portion of the information respecting it, which rests on the authority of Bishop Burnett, has, by some, been

\* Ut supra, vol. iv. p. 440.

† See Reeves's History of the Law, vol. iv. p. 184. Hume's History, Appendix III.



subjected to doubt; yet I do not consider the accuracy of the facts to be much affected, and there seems to be more reason to admit than to question his accounts\*. He states, that many elections for the first Parliament of Queen Mary, were effected by violence and force; adding, that there were also many false returns made, and that some members were even violently turned out of the House. There may possibly be some exaggeration in the last part of this, but it seems probable that there is also some truth†.

In the second Parliament of Edward VI. great court influence is said to have been openly used, and the names of candidates recommended are mentioned; but the strongest example of an illegal and dangerous act of this nature, is found in a general letter from the King to all the sheriffs, tending to bias the people in their choice of members‡.

\* The objections to the Bishop's statement on this head, appear to be satisfactorily answered. See Gutch's *Collectanea*. And authorities are added to confirm his testimony.

† Burnett, *History of the Reformation*. Carte.

‡ This letter, after premising that attention ought to be paid in elections to the choice of men of gravity and knowledge, and that some part of the proceedings depended on the sheriffs; they are commanded to give notice of the King's desire in that respect, and also, that where the Privy Council or any of them shall recommend men of learning and wisdom, such direction is to be regarded and followed, as



It has been objected against some of these accounts, that such abuses could hardly have existed, and no petition nor complaint be made on them. But this, although a natural observation, cannot be sufficient of itself to overturn an authority otherwise unimpeached. There are many parliamentary transactions of a seemingly improbable nature, which are nevertheless undoubted facts. The proclamation of James I. touching the elections to his first Parliament, contained recommendations on the subject, unexceptionable in

tending to the King's desire. It is farther stated, that letters from the King were sent to the sheriffs, recommending the following persons as knights of shires, viz. Sir R. Cotton for Hants, Sir William Drury and Sir H. Bedlingfield for Suffolk, Sir John St. John and L. Dyer for Bedfordshire, Sir T. Caverden and John Vaughan for Surrey, Sir E. North and J. Dyer for Cambridgeshire, Sir W. Fitzwilliams and Sir H. Nevill for Berkshire, Sir J. Williams and R. Fines for Oxfordshire, and Sir N. Throgmorton and R. Lane for Northamptonshire. It is added, that these persons belonged to the Court, or were in places of trust about the King.—*Styke's Eccles. Mem.* vol. ii. p. 394.

Mr. Hume seems disposed to question the violence said to be used in the elections for Queen Mary's first Parliament; but considering what is said on the subject by Mr. Carte and others, his objections do not seem well supported. In the Parliament of 1555, we have an instance of the conduct of the Court with regard to the Upper House, in a letter from Sir William Petre, Secretary of State, to the Earl of Shrewsbury, conveying the Queen's leave of absence from the House, wherein he gives directions to whom His Lordship is to intrust his proxy.—

*Lodge's Illustrations of British History.*



themselves, and even praiseworthy ; yet in a time of popular jealousy, the salutary exhortation conveyed in one of them, to avoid returning “ *bankrupts and outlaws*,” was complained of as a grievance \*. This is hardly more extraordinary than that Edward VI.’s circular letter to the sheriffs, does not appear to have occasioned any petition or remonstrance.

Mr. Hume affirms, that in the two Parliaments summoned by Queen Mary in the year 1554, great sums of money from the Emperor and King Philip were employed in the elections, and in bribes among the members. Circular letters were also written by the Queen, and all the power of the prerogative used to direct the elections †.

In the first Parliament of Elizabeth, the same author represents, on the authority of the Clarendon papers, that five persons were nominated by the Court to each borough, and three to each county ; and that, by the sheriff’s authority, the members were chosen from among these candidates.

Under James I. the instances of interference are numerous ; they become, indeed, more and more remarkable as we approach the period of the Revolution, and are so readily found in all the treatises of the times, that if it were not su-

\* Petyt, *Jus Parliamentarium*, p. 328.

† Strype, *Ecclesiastical Memorials*, vol. iii. p. 154.



perfluous to dwell on them, it would be easy to make a recital of abuses, to which I see nothing nearly to be compared in later times. Previous to this reign, an abuse seems to have taken place that shows at once the power of individuals in towns, and the little value that was still, on many occasions, set upon the privilege of sending to Parliament. It consisted in the making up and signing returns of elections, leaving a blank space for the names of the persons; and such documents were sent to the lord, or patron of the place, who inserted the names of those he thought fit. That such a practice existed, we may be sure from the proclamation of James, which takes notice of it, directing that it be avoided, and that the members be chosen freely, according to law. The abuse continued probably after the reign of James. Whitelock, in his Notes upon the parliamentary Writ, gives an anecdote which seems to imply, that this practice, or something not much different, was in use in the time of Charles II.: he observes, that it is not necessary for a candidate to be present in some elections for towns, "because the letters or messages of some lords of the towne, or great men, are sufficient to procure the choice of whome they please to nominate; and, therefore, these may the better be absent; insomuch as the story goes of a gentleman, in the beginning of the last Parlement, who being asked for what towne he served, an-



swear'd, that truly he had forgot the name of the towne; butt that such a gentleman, naming another member, a great man, knewe the name of the towne, and that he was absent at the election \*."

Between the Restoration and the Revolution, the instances of influence and corruption become more conspicuous than in any former period †; and under Charles II. a new device was used by the Crown in many corporations, different from any that had before been known; this was obtained by the proceeding or action at law, called *Quo Warranto*. The issue of an action of this description, tried against the city of London, being favourable to the views of the Government, by forfeiting the immunities of the corporation, the Crown was thereby enabled to model it anew, and to exercise a controlling power in its proceedings.

\* There is preserved an application to the borough of Andover in 1184 from the Earl of Leicester, who was steward of the town, for the nomination of one or both of the burgesse; he engages to pay the wages, and adds, that if they will send him an election with a blank, he will put in the names.—*Cont. Mag.* Aug. 1731.

The Earl of Leicester was lord of the town, and procured a renewal of its representation, which had been suspended for about three hundred years.—*Conte.*

† Somerville's Pol. Trans. passim. Hume, History, sub an. 1679.



When the Judges, like the King's political servants, were removable at pleasure, the decisions of the courts were liable to fluctuations, which I believe now no longer exist; and when the action against London was decided in favour of the Crown, although upon a very frivolous pretext, it is not surprising that the other corporations wanted courage to withstand similar attempts against their charters\*. Suits were instituted against other towns, and many surrendered their charters, expecting to be the more favourably treated; the general result was, that the Crown added largely and decisively to whatever influence it might before possess in borough elections.

There occurs but one circumstance more, worthy of being added, on the head of parliamentary influence existing in the times of which I now treat: it relates to the Cinque Ports. These consist, in fact, of eight towns; and for each of them, the Lord Warden had, previous to the Revolution, nominated one member; this constituted a very great privilege, and was, probably, always devoted to the Crown. Although the circumstance has been but little noticed, yet

\* Somerville, Pol. Trans. p. 140. Oxford, Winchester, and Totness, are said to have been disfranchised, and Norwich threatened—*State Tracts*. The electors in the city of York were also changed.—*Hume*.



it was claimed as a right, and an act of the Legislature was necessary to abolish it\*.

Thus stood the House of Commons\* at the epoch of the Revolution; exposed certainly to every species of influence, and the elections were unguarded by any direct law against that most unconstitutional and pernicious of all artifices, bribery. There was indeed a resolution of the House in 1678, against treating beyond a certain extent; but the first *law* against it was in the seventh of William III.

I have not attempted to detail all the instances of interference in elections, nor of the ascendancy of the Crown in Parliament, that occur in our histories, but have purposely adduced only a few examples, from whence we may readily judge of the minor practices which might be, and doubtless were, in use. It is not, however, from any deficiency of evidence of a continuation of influence in the House of Commons, that I pause at the period of the Revolution, and I hope I shall not incur the displeasure of the eulogists of the immortal memory of William III. if I forbear to dilate on the history of the bills for triennial Parliaments, or for the free and impartial proceedings in that

\* Stat. 2 W. and M. sess. 1. c. 7.



assembly, which were so much agitated during his reign

Having thus brought a view of the general condition of Parliament, down to a period from whence the accounts are so full and recent, as to render any farther narrative unnecessary; there remains only to repeat, that the principal changes which have taken place in the elective franchise for towns, seem to have been effected in the time of the Puritans, and by the operation of the *Quo Warranto* proceedings under Charles II. and his successor. The effect of this last very arbitrary conduct of these Princes has undoubtedly subsided; and at the present day, the Crown possesses no control in the corporation of London, or any other town, that affects its parliamentary rights. Considering, indeed, the very active zeal of the gentlemen engaged in the pursuit of instructing the people in the knowledge of their lost rights, it may be assumed as an incontrovertible fact, that no encroachment now remains in that quarter. But of the changes introduced by the Puritans, by extending the right of election to inhabitants at large, I apprehend, examples do remain in several boroughs.

\* Somerville's Pol. Trans. Cunningham's History. Kennet's Life of William III. &c. &c.



The only distinct reference to invasion or change of popular right that I have been able to discover, is pointed to the time of Henry VI. when the privilege of voting for counties was, by the act of the eighth of that reign, restricted to freeholders of the amount of forty shillings yearly, clear of all charges \*.

Of the various confutations to which the complaints upon this statute are open, perhaps that which ought to be first adduced is, that, admitting it to have been an unwarrantable innovation at the time of enactment, it is now, by the immense change of circumstances, no longer a grievance; for when we examine the relative state of money, we shall find, that the possession of a forty shillings freehold, which still entitles a man to vote, is of much less value, and consequently within the reach of a greater number of persons, than almost any freehold that was then likely to be attainable †.

\* See p. 209.

† The Qualification Act took place in 1429, but the nearest period in which a calculation can be conveniently made is 1412.

Sir G. Shuckburgh's table is liable to be misunderstood, unless combined, as I have said, with Mr. Folkes's statement of the coinages: the former shows only the depreciation of money in value, and not in tale. See Mr. Wheatley's Essay on the Theory of Money, &c from whence it appears, that twenty shillings of the year 1412 would be coined into 1*l.* 18*s.* 9*d.*



According to the principles of computation adopted by Sir George Shuckburgh, combined with the table of Mr. Folkes, forty shillings now is equal to no more than about two shillings and eight pence in the year 1412; it will not, therefore, be deemed probable, that previous to the act in question, there could be so many holders of land of this small value, as there are now of forty shillings freeholds: and that forty shillings per annum should, in the present times, form a qualification to vote for a member of the Legislature, will be found, on reflection, to be a greater approach to individual suffrage than is consistent either with the independent or the rational exercise of the privilege. Many striking proofs might be brought to show, that freehold tenures were originally of extraordinary magnitude, and proportionally few in number; and, as no great proprietor can be supposed to alienate any extremely diminutive proportion of his possessions, many subdivisions must have taken place, and a very considerable space of time must have elapsed, before many tenures of even twenty shillings yearly value were created; it is difficult, therefore, to

of our present money; and then applying Sir G. Shuckburgh's proportions, *1l. 18s. 9d.* will be worth *29l. 8s. 3d.* in the year 1806, to which period Mr. Wheatley has carried the estimate of depreciation, in a great measure, on the authority of the worthy Baronet, posterior to the date of his table.

If Bishop Fleetwood's estimate was adopted up to his time, and taken from that period (1706), according to the above table, it would give a depreciation somewhat greater.



conceive, that at that early period (the beginning of the reign of Henry VI.) there could be almost any separate holdings of the Crown upon so low a scale as two or three shillings annual rent.

It is true that the Qualification Act took a large step in restriction; as forty shillings, at the time of its passing, was equal to more than 30*l.* now, and this, together with the preamble of the statute, shows strongly, how much the prevailing notions were then against any great popular participation in county elections; still no petition appears to have been presented against the restriction; and it is reserved for the present age (of *reason*, as it is sometimes called), to complain of the effects of a regulation, which, in fact, operates more than ever in favour of the extending privilege which is sought for.

Going, however, at once to the substance of the complaint, it may be contended, that before a case of grievance fit for the proposed redress can be made out, two things must be shown: first, that the Act of 8 Henry VI. is invalid; and next, that the description of persons to whom the elective franchise is proposed to be extended, are subjected to a deprivation by the effect of that act. This last consideration has been just investigated, and there are no grounds on which the validity of the statute can be questioned: for if it should



be contended that this is a constitutional point which even the Legislature cannot alter, and that the qualification prescribed by the eighth of Henry VI. c. 7. is upon that principle illegal, how can gentlemen who hold such an opinion, apply to the Legislature to disfranchise all the cities and boroughs, which, in addition to their original right, have enjoyed their privileges about four hundred years longer than the supposed class of injured freeholders?—Would not this also be illegal?

Of the various attempts for a reform of Parliament, agitated since the year 1779, that in which a great number of gentlemen of Yorkshire bore a very conspicuous part, was by much the best managed effort; it was brought forward at first under the plausible pretext of amending financial abuses, which during the American war had reached an unexampled pitch of excess; and, had it been true, that the only means of correcting those abuses were to be found in a reform of Parliament, there had been little need to seek other grounds for its accomplishment; but it seems probable, that the popular agents had then various other views, which might be unattainable, otherwise than by means of a very great change in the structure of the legislative body. Hence, perhaps, they resorted occasionally to arguments founded upon a supposed right to an almost unlimited elective franchise, for the restoration of



which, they easily found many reasons; and connecting this with the corruption and degeneracy, ascribed to the present times, a mass of arguments was collected, which made considerable impression throughout the kingdom. The restoration of an ancient purity,—of certain genuine principles,—and of unalienable rights, furnished powerful means of gaining popular support, and the advantage of an able leader afforded sanguine hopes of a great change.

Among the numerous correspondents, which the industry and talents of the Rev. Mr. Wyvill attracted to his assistance, many were of the same rank, and some superior to those whom Sir F. Burdett addressed in June 1800; with such personages he did not at all, or but seldom, argue upon the *lost* rights of the people in representation, or of a natural and imprescriptible right now withheld from them; he abstained from pressing those parts of his arguments in such quarters, relying chiefly on reasons of expediency, which certainly form the only proper grounds on which a moderate reform can be supported, as a remedy against those changes in the representation which are naturally produced in the progress of time and change of circumstances. In the prosecution of his great undertaking, this gentleman used generally the most specious professions; but his objects were probably considered



too extensive. A certain amendment of the representation might, not unreasonably, be urged; but when his intentions were found to embrace the views of the Dissenters, and the Catholics both in England and Ireland, and when he connected himself with the promoters of the wildest innovations, the tendency of his measures might well appear hazardous, and deprived him of the co-operation of many prudent well-wishers to the cause, upon different principles.

Had Mr. Wyvill been contented to pursue the line of conduct, which somewhere in his correspondence he admits was not unfit; could he have waited, on some occasions, to be called forward in a cause, that without peculiar reasons, might be deemed foreign to the appropriate duties of his profession, the unsuitableness of his overstrained zeal might have escaped animadversion; and if he had been more definite in the ends of his pursuits, and more select in the choice of his associates, he might have attained no inconsiderable portion of public approbation. But his philanthropic ambition seemed almost boundless. The correction of financial abuses, and the amendment of a decayed representation, were improvements which might have been promoted, if not accomplished, by the aid of his talents and discretion, undisturbed by an over-zealous ardour; but the important changes at which he seems



to have aimed, often little connected in themselves with these objects, might well occasion a pause in the support of many persons otherwise desirous of such national improvements \*.

The unseasonable pertinacity with which the attempts at reform were pursued, together with an increased scale of innovation, irreconcilable to the moderation professed, seems also to have greatly conduced to frustrate the efforts of the Yorkshire reformers; and although Mr. Wyvill is somewhat less frequently to be charged with the erroneous statements adopted by Sir F. Burdett, still he has not abstained entirely from adducing to the people, when he addressed them, circumstances of grievance largely mistated, and arguments tending greatly to mislead the opinions of persons generally unable to investigate causes, or appreciate their effects †.

\* It was doubtless upon grounds of this description, rendered doubly dangerous by violent popular agitation, and the dissemination of French revolutionary principles, that Mr. Pitt withdrew his co-operation from Mr. W. and his connexions. Mr. Pitt never urged parliamentary reform but upon principles of expediency; and it may, perhaps, be doubted, whether his moderate but judicious propositions were ever perfectly satisfactory to Mr. Wyvill's large desire of innovation.

† Mr. Wyvill always mixed with his most inflammatory appeals, something of order, of rational liberty, of principle, of the Constitution; even something against tumult, while he was urging meetings infinitely more likely to end in riot, than in



Without stopping to enlarge on the assumptions which Mr. Wyvill and his associates used, that their proposed reform was moderate, which I do not admit \*, and that it was requested *by the general voice of the people*, which cannot be shown,

measures that any prudent and peaceable subject would desire. Of this description was his dangerous address to the people of Yorkshire in 1795, apparently intended for the freeholders, but, in fact, calling on the weavers and husbandry-labourers to come forth. The expressions were: "Come forth, then, from your looms, ye honest and industrious clothiers; quit the labours of your fields for one day, ye stout and independent yeomen! come forth in the spirit of your ancestors, and show you deserve to be *free*!" He then proceeds with the caution to which I have alluded: mixing with the Treason and Sedition Bills, the calamities of the war, and calling upon the people to support "*measures alluded to, or any other measures of a similar tendency.*"—Wyvill's Pol. Pap. vol. v. Mr. Wyvill is eminently skilled in the management of popular meetings, and by some indefinite expressions in calling them, or in the objects to which they might consent, he generally left a wide range for the exertions of a committee, or the leading persons who acted. Yorkshire Meeting in 1779. Ibid. vol. i. and its consequences.

\* The original proposal from the Yorkshire Association was to add one hundred county members; and it seemed intended that fifty boroughs should be disfranchised. In 1798, however, it was proposed to resolve, "that the boroughs in their present state are a public nuisance, which, if not abated, must soon prove destructive to the rights of the British nation." This proposition, Mr. Wyvill informs us in a note, was communicated to Mr. Fox, Mr. Grey, and many others, and by them approved.—Vol. v. of *Mr. Wyvill's Papers*, p. 393 and 394, and corresponding preliminary Paper, No. XXI.



I will state more particularly the grounds of some of the objections taken to his proceedings:

The Yorkshire Committee stated to the public, *that a perfect equality of representation may be supported by the ancient practice of the Constitution* \*; they contended, that the balance of the constitution of Parliament has been deranged, by an undue interference of royal authority, which has thrown a weight of power into the scale of boroughs; nay even inferior boroughs. This misrepresentation is conveyed in the following terms: "The balance of our Constitution had been wisely placed by our forefathers in the hands of the counties and principal cities and towns; but by the caprice and partiality of our Kings, from Henry VI. down to Charles II. it was gradually withdrawn from them, and by the addition of two hundred parliamentary burgesses, was wholly invested in the inferior boroughs." It was afterwards stated, that this *caprice and partiality* was an *irregular exercise of the royal authority*, and that *the gross abuse in the representation of the people, originates chiefly in royal innovation* †.

The second Address to the Electors of Great Britain begins thus: "Parliament, in its original

\* First Address to the Electors of Great Britain, vol. i. of Mr. Wyvill's Political Papers, p. 316.

† Ibid. p. 310 and 311.



form, seems to have been admirably fitted to resist the attack of corruption. - In that primitive state, a majority of the electors of England appointed a majority of the House of Commons; and, in fact, the right of election annually vested in the body of the people a regular and complete control over their trustees. In an assembly so constituted, the poison of corruption would hardly find admittance in any dangerous degree; respect to the constituent body would generally operate as a preservative against it; and on any appearance of infection, that effectual remedy which the public possessed would be instantly applied. But our easy unsuspecting ancestors unwisely suffered our monarchs, from Henry VI. down to Queen Elizabeth, to mar the ancient constitution by a most disproportionate addition of boroughs."

Such, in part, is the account of our original parliamentary constitution, which the Yorkshire Association, under the direction of their committee, held forth to the electors of Great Britain; and the prevailing features which characterize the picture, are, in the other parts of their compositions, blended with an approaching background of universal suffrage, together with the popular phantoms said to be found in *the genuine theory of civil liberty*. These materials are, by the talents and address of the reverend and patriotic leader, often too successfully mixed into



statements; that, instead of truly instructing those of the people superficially or not at all informed, whom with others it was meant to guide, either beguiled their ignorance, deluded their understanding, or inflamed their mistaken zeal.

But, it may be remarked, that I am now referring to transactions long past; that opinions may have changed with circumstances, and that the allusion is uncalled for, when the farther appearance of such mistakes has ceased.

Could such a remonstrance be made on suitable grounds, or did *any* subsequent occurrences \* indicate either change of sentiments or a diminished tendency to ill effects, resulting from their propagation, I should certainly not wish to revive the subject; but nothing of this description appears. Sir F. Burdett, on the contrary, evidently copies from his predecessors, the worst errors of reform; and several years after Mr. Wyvill's public patriotic labours had closed, he has published a great proportion of his various correspondence, for the express purpose of justifying the opinions and proceedings of almost all the reforming societies, and all the wild enthusiasm of their leaders and promoters. This perseverance in a dangerous fallacy is not trivial, but highly important; it is likely to perpetuate dis-

\* Except what will be hereafter noticed.



content founded on misrepresentations of national circumstances, which, if extensively successful among the people, and the delusion be neither corrected nor withstood, very heavy and irreparable calamities may ensue.

Mr. Wyvill corresponded, if not with all, at least with the greater part of the distinguished persons and societies who urged the most extravagant, the most unwarrantable, and the most dangerous changes—changes, not eventually or in probability dangerous, but which could not in possibility be effected, without involving the country in a chaos of confusion and misery, of which no human penetration could foresee the end.

It would be very tedious to mention all the alluring, but delusive schemes of improvement, suggested by his various correspondents; and it may probably be found sufficient, when I call to the recollection of my readers, that the proceedings of the Westminster Committee in 1780, are comprehended in his volumes. This Committee, amongst other unwarrantable and inflammatory publications, after examining, as it is said, *the laws relating to parliamentary elections*, and finding it necessary to condemn the far greater part of them as contrary to the acknowledged principles of the Constitution, resolved, “That



through the joint operation of the Statute of Disfranchisement passed in the eighth year of the reign of Henry VI., and the triennial Bill of the sixth of William and Mary, which attempted to give the first legal sanction to the continuance of the same Parliament beyond the period of a single session, the representation of the Commons of England is virtually annihilated; and an institution which was intended to be the people's defence against aristocratic domination, or regal despotism, is now become an engine in the hands of the minister, to tax, oppress, insult, and enslave the people of this country.

“That the present inequality in the representation, in a great measure *originates in an arbitrary exercise of the royal prerogative*, whereby, in opposition to the clearest principles of the Constitution, the Crown presumed to authorize, at pleasure, certain incorporated bodies to send members to the Commons House of Parliament; the unsuspecting people of this country, at the same time, not attending to the inequality that from thence must necessarily take place in the representation, to the substantial injury of themselves, and every succeeding generation.” Then, after adverting to the decay of many represented towns, “*the invasion of the liberties of Englishmen in the reign of Henry VI.; the almost obliterated remembrance of that important fran-*



*chise, the universal right of suffrage;* and some other remarks;—governed by these considerations, the Committee recommended a plan by which *the fabric of the present House of Commons would be utterly abolished!* and that every inhabitant of the country, rich and poor, high and low, shall elect members of Parliament every year!—A plan, according to which, *all* would be *electors*, and *any* might be *elected*, except foreigners, criminals, women, children, and madmen!

Such was the new scheme put forth from the metropolis of the kingdom (at least from Westminster); and it was recommended, as “a plan founded upon *constitutional principles*, and the common rights of mankind—a plan *expedient in our present circumstances*, and which may *with facility be carried into execution by the spirited, yet pacific efforts of the people*; provided their breasts are informed with the *same sentiments* of public virtue, and ardent love of liberty, which have *hitherto animated the exertions of the English nation.*”

The report of which the above is a part, was made by a sub-committee, and signed, “T. Brand Hollis.” And the General Committee resolved to give their thanks to the chairman and members who drew it, and that printed copies of it should



be sent to the several committees of the counties, cities, and boroughs of the kingdom, which was signed, "C. J. Fox

Now these proceedings, and many others of a similar cast, have been published by Mr. Wyvill; in order to justify the body of reformers with whom he had corresponded and acted, and "to rescue the character of those men in Parliament, and out of it, who, during the period alluded to, have been too successfully calumniated as enemies to their country and its constitution, at a time when they alone adhered to its genuine principles. For, notwithstanding the ruined condition of the Constitution, and the degrading apathy of the public mind," continues Mr. Wyvill, "*events may again produce its elevation to a level with the free spirit of, our genuine Constitution †.*"

The plan lately brought forward by Sir F. Burdett is nearly the same as that recommended by the Westminster Committee, and the Yorkshire propositions of 1798; the arguments also by which he supports it are similar; they appear, in-

\* See the Rev. C. Wyvill's Collection of Political Papers, vol. i. p. 228.

† See Advertisement dated June 26, 1804, prefixed to the fifth volume, as above.



deed, in a great measure, copied from what had been before urged. Taking them together, they seem to be grounded chiefly on the following assertions, viz.

That a perfect equality of representation is supported by the ancient practice of the Constitution. That the balance of the power of the House of Commons was thrown on the side of the towns by an arbitrary innovation effected by the Crown, in adding to their number of representatives, contrary to the rights of the Constitution; and that the Statute of 8 Henry VI. is contrary to the Constitution, and invalid. Finally, as, in consequence of these changes, the House of Commons, instead of being a defence to the people against the Crown and the nobles, is become an instrument of taxation, oppression, insult and slavery; the abolition of an institution so abused, is not an innovation or a subversion of its constitution, because it is only proposed to restore it to its primitive condition *by a recurrence to ancient practice.*

I have, in the course of these Reflections, taken considerable pains to investigate the real state of the Legislature, from the Conquest to the Revolution. I have endeavoured to notice every circumstance that seemed material to an understanding of the state of society as to cons



stitutional concerns, in a manner as little prolix as seemed consistent with a thorough view of the extensive subject. I have, perhaps, by an ill-considered brevity, or too limited information, exhibited a case weakly evidenced, which a fuller and better executed production might have unfolded with historical demonstration. Still, however, I trust, that sufficient grounds have been shown, to enable me to deny, that the class of persons now attempted to be introduced as voters for members of Parliament, were ever invested with that privilege;—that they have a right, according to any practice of the Constitution, to enjoy it;—or, that a perfect equality of representation is to be found in the ancient constitutional system. It may farther be most decidedly said, that the balance of the power of the House of Commons never was on the side of the counties \*; and that the Crown did not act contrary to any principles of the Constitution, in calling by its writs, representatives from the various towns which have so much increased the number of that class of members. And with

\* It will, perhaps, be here observed, that the statement referred to means the counties and principal towns, and the remark may be verbally just; but when it is recollected, how few of the principal towns have the elective privilege, unconnected with corporation rights, and that the main bearing of the reformers is against those rights, and all town representation as such, the objection will be found very immaterial.



regard to the assertion, that the institution of the House of Commons is changed into an instrument of taxation and oppression ; it is better left unnoticed, in the hope that it may pass through disregard into oblivion.

In considering any constitutional point of former times, we must altogether put aside the present acknowledged system. Mr. Hume says, there have been several constitutions. The first he supposes to have been altered by the signing of the charters ; this change was, I conceive, but inconsiderable until the reign of Edward I. ; but from that period to the accession of the House of Tudor, he affirms, that different leading maxims came into use. In this space of time, however, a material change was produced, importantly marked by the progress of the House of Commons to an increase of power, which during the first part of the period, seemed confined nearly to purposes of taxation, but long before the expiration of it, was extended to complete legislative control. During the age of the Tudors, the prerogative was considered to have been increased ; but, afterwards, by popular efforts, chiefly under religious pretexts, or connected with them, the different powers of the government were better arranged for the liberty of the subject ; and by a continued series of improvements, the national polity or constitution stands now acknow-



ledged on a footing which confers no more power on the executive branch, than seems to be necessary for an efficient government, and at the same time perfectly consistent with rational freedom to individuals.

There appears no other way of viewing these different systems that successively prevailed, than as each of them, constitutional while practised, provided there was no regulation against them by the then acknowledged authority; for it is undeniable, that such difficulties do occur in ascertaining what was of old considered the supreme authority, duly acknowledged, and legally binding, that we are frequently obliged to submit to this conclusion, or, that the government was so unsettled, as not to admit of a distinct line being discernible, to limit the powers of the different parts. Taking, however, all these circumstances as we find them, it is evident, at the period of King John's Charter, that a *Commune Concilium*, called according to the provision it contained for the purpose, namely, the archbishops, bishops, earls, and great barons, summoned personally by the King's writs, and all who held in chief, generally, by the sheriffs, were competent, with the King, to impose taxes, on all persons then in a condition to pay them, except inhabitants of towns, and that these were taxed by the King's Justices in their *iters*, or by other of-



ficers, under the authority of the Crown:— That afterwards, the 'first deputies chosen' or sent to the great national Council (by whatever name it may be called), were sent on the part of those possessors of land *in capite*, or freeholders (before summoned generally by the sheriffs), whose property was so small, that they could not, each for himself, conveniently give attendance with the great men, agreeably to King John's Charter. That the first attendance of deputies or representatives was not for the purpose of exercising an effective share in legislative authority, *but for the assessment of taxation*. That when many places came to be populous, and their inhabitants capable of contributing to the exigencies of the state, and while some were privileged from certain powers of their lords by charters and immunities, and others, retained in ancient demesne, or in particular burgage tenure, certain towns were called upon by the King's writs, to send deputies to the great Councils or Parliaments, for the purpose of agreeing to an assessment to be generally levied on all towns. That the representatives of the small tenants *in capite*, or freeholders, were called knights of shires, and *were originally chosen by no other description of persons than freeholders of the Crown*, which were the original and proper suitors at the county courts. That the Act of the seventh of Henry IV. *which first legalized a deviation from that principle*, by



·permittting all who came to the county court to vote for the knights, continued only for the space of four-and-twenty years, part of the period of the usurpation of the House of Lancaster, and was altered by the Act of the eighth of Henry VI. ; which, although it restricted the choosing of knights of shires to freeholders of forty shillings clear, yet in so doing, the measure partook more of the character of the ancient practice, than the innovation which it corrected, and was in conformity to a petition of the Commons in Parliament. That in towns which were incorporated, there is no reason to suppose that the deputies were chosen otherwise than by the corporations. But in towns of ancient demesne, and inhabited by burgage tenants, the electors were those who were suitors in the respective courts of the Crown, or Lords ; and these, from all the analogies of the times, must be supposed the superior class of inhabitants. That the number of knights returned from each county was two, and the number of counties summoned was anciently thirty-seven : making the total number of members for counties seventy-four ; and that, by the earliest writs, or returns of towns, there was constantly summoned a number of them, and of members for them, at least double of those for the counties. And, finally, that the prerogative of the Crown, to confer the right of representation on towns, was *never* ques-



tioned until the twenty-ninth of Charles II. upon the occasion of the *last charter to that effect*, when the prerogative was sustained by a very large majority of the House of Commons.

These points I assume as incontrovertibly true, and, thereupon, the existence of any old constitutional right to the contrary is denied; and it is farther contended, that the present *system* and *scale* of representation have been completely confirmed by the sanction of later periods, when additions have been made to the House of Commons, and at the Revolution; upon which great occasion no change was even agitated, notwithstanding the proofs that had recently appeared of the possible insecurity of corporate rights, together with stronger instances of influence than any in the present age.

But it will be said, there exist natural rights, which no usage, custom, or law can take away. Those who argue on this ground for a change in the government, forget the high and extensive nature of the obligations imposed upon man in society. They forget that the supreme power is effectually resigned to what is called the Legislature; that that Legislature, or Constitution must support itself, and is necessarily armed with all the powers of the society for that purpose. They seem not aware, that no more of the na-



tural rights are allowed, than is consistent with the legal purposes of the Constitution, or Legislature: and this Constitution—the community thus embodied and incorporated, has, in the exercise of the supreme power, affected almost all the rights of man.

What is called property is not so much the effect of a natural right, originally and properly so called, as of the regulations of society—of the Legislature. People are very ready to talk of a natural right over their property; but in a state of perfect nature, where there was no law but that of the strongest, there would be little or no property but to the strong: it is only created and protected in proportion as advances are made towards the ends of society, which are the general practical benefit. Personal liberty is reckoned another right of nature; but, in truth, this is more affected by the regulations of society than property; for, although life is the peculiar gift of incomprehensible Omnipotence, yet the regulations of society affect it in a high degree. Life, and personal liberty might be said to be somewhat less objects of human control than property, which seems in a measure raised by its care; but the supreme power of society may as much prescribe the use and abuse of the two former, as of the other. For instance, no man may lawfully put an end to his life; neither



may he lawfully be idle, if he have not wherewith to maintain himself. A man cannot marry, although a woman consent, without complying with certain formalities to render marriage legal; and he cannot make more interest of his money,—his property, than the law prescribes, although another person shall be willing to give it \*. In all these cases, and many others, society interposes by regulations which affect strongly the natural rights of man, in matters where none but the party to the act is injured; and natural liberty is restrained, for no other reason than because it accords with the policy of society, as decided by its Legislature.

It will be observed, that I am here alluding only to English society and policy; and some of the instances adduced, may admit of doubts on their

\* This restriction of natural right over property is peculiarly unaccountable in the abstract; its political expediency is also doubted upon strong grounds in some cases; for it seems extremely difficult to give a good answer to the following plain question: "Why a man of ripe years and of sound mind, acting freely, and with his eyes open, ought to be hindered, with a view to his own advantage, from making such bargain in the way of obtaining money, as he thinks fit: nor (what is a necessary consequence) any body hindered from supplying him, upon any terms he thinks proper to accede to?"—*Bentham's Defence of Usury*. Yet by reason of a supposed general interest of the community, of which the Legislature is the judge, people are here restrained from applying their private judgment to their private circumstances.



expediency; yet no individual is to think himself aggrieved, or injuriously dealt with, as the Legislature considers, that these restraints on natural liberty are for the common good, to which it is empowered to render all individual interests equally subservient\*.

But it has been said, that the Legislature cannot alter the Constitution. This is a mistaken assertion: constitutional points have been often altered; the Constitution was altered at the Revolution, and many parliamentary enactments are to be found that affect constitutional rights.

• It may also be said, there must be bounds to this power of the Legislature, and those bounds are marked by the Constitution. Many have joined in arguing that there are certain rights which it cannot take away, and that the forty shillings Qualification Act of Henry VI. was unconstitutional and invalid. These, however, are also mistaken assertions. The supreme power, or settled legislature of this kingdom, is the most boundless power that human policy can establish; and we need only reflect on the laws of treason and rebellion, with which all consti-

\* Although M. de Montesquieu has said, that “ Dans l'état de la nature, les hommes naissent bien dans l'égalité,” which, in an unqualified sense, may be doubted, yet he adds, “ mais ils n'y scauroient rester. La société la leur fait perdre, et ils ne redeviennent égaux que par le. loix ”—*L'Esprit de. Loix*, tom. i. livre vii. ch. 3.



tutions are in some way guarded, in order to be convinced, how necessary it is universally considered, that the power of the Legislature should be as nearly irresistible as human institutions can make it. To argue upon an appeal from this paramount trust reposed in a Legislature, is to suppose an extreme case of general resistance, very rarely authorized, of the most calamitous effects in its operation, and which almost never ultimately produces the amelioration of a constitution.

The supreme authority is certainly bound by the universal rules of reason ; as for instance, it may be said, the Legislature cannot award a criminal punishment upon any person, for an offence committed by another ; but it may take a very wide range in the connected policy of its regulations for the general benefit, and it may render communities responsible for their members, if they are not forthcoming to answer for themselves, and in other cases. In all arrangements of constructive policy, it will judge and determine, and is not to be resisted, although, in so doing, it should injure individual right. No man can avenge injuries done him, and a man is barely permitted to defend his person when his life is attacked.

But let us look to the proceedings of the Legislature in regard to the rights of the Consti-



tution: we shall there find many examples of laws, distinctly affecting them. I shall select a notable instance of this power, which will probably be allowed by the most zealous advocates for reform, and the most strenuous impugners of the Qualification Act. It is the Act of 22 George III. c. 41 (called according to a bad fashion of the day, Mr. Crew's Bill), which disqualified almost all persons employed in the assessment and collection of the revenue from voting for members of Parliament, and thereby deprived about thirteen thousand persons\* of their elective rights;—rights possessed by every title that statute and unquestionable prescription could establish; but neither this act, nor others that affect the right of sitting in Parliament. have been, or can be, questioned.

The Act of Settlement, which altered the succession to the Crown, was, perhaps, of a still higher nature, and affected a very essential part of the Constitution; it was resisted by the supporters of the exiled Prince, and his less offending heir; among these were many excellent, though misguided persons, who paid the legal forfeit of their lives and fortunes, by the operation of the laws to support the new arrangement, which the Legis-

\* This was the Marquis of Rockingham's estimate.—*Wyvill*, vol. iii. p. 357. Sir J. Sinclair states the number at five hundred less.—*History of Revenue*.



lature thought it expedient for the general good to adopt.

If it be permitted to question any act of the Legislature, it might be argued, without commenting on the preliminary forms of the important transaction alluded to, that in point of justice, the heir of James II. might complain of being excluded from his constitutional inheritance before it was sufficiently known that he was liable to the application of the new rule of succession that was adopted. For admitting what the Convention voted against James II. to be strictly true, and that a reciprocal contract between him and his people was broken so as to absolve them from their allegiance; yet, *the son of James had not broken any contract*, and the monarchy being hereditary, a regency might have been appointed during the life of the King, or the minority of his son. The policy of the Legislature turned upon two principles; namely, the unconstitutional conduct of the King, which had been experienced; and a determination, that for the future benefit and security of the kingdom, all its Monarchs should adopt the Protestant religion. Yet the son and heir of James had committed no unconstitutional act; and for aught that could be, before the Parliament at the time of their changing the succession, he, at some future period, might have embraced the Protestant religion,



which his fathers for three generations had professed. Here the justice of the case was overlooked, and the policy of measures so founded is exposed to doubt. Had the rights of the natural heir been consulted; the example might not have been less dignified or useful, and the foundation for subsequent proceedings cleared of all difficulties that did not unavoidably arise in the nature of the circumstances \*

I have gone into these short remarks, only for the purpose of illustrating the power which our Legislature, even in an imperfect state, has been acknowledged to possess; for with all the disadvantage of the objections to which the irregular assembly of the Convention is liable, together with what is now stated, yet have its enactments been universally held binding, and one of our most able political economists has considered the title of William III. as standing on the best possible foundation †.

The arguments of this distinguished logician will indubitably apply to the Statute of Henry

\* The question for a regency was warmly debated in the House of Peers; and on a division, was rejected by a majority of only two, there appearing for a regency forty-nine, and against it fifty-one — *Somerville's Pol. Trium.* There were also 151 commoners inclined to a regency — *Anonymous Life of William III.* where a list of them is given.

† Locke, Preface to *Essays on Government.*



VI. with equal, or, perhaps, with superior force, than to the proceedings at the Revolution; because, on the latter occasion, the regulation was originally adopted by a Legislature not complete in all its parts; and its subsequent adoption or confirmation, by a Parliament and King, constituted as they both were, may not, in every respect, be considered as a disinterested course, in an unmixed contemplation of public advantage: whereas the Act of 8 Henry VI. is less exposed to such objections; and the main point on which Mr. Locke relies, namely, the consent of the people\*, must also be taken as more in favour of the Act of Qualification, because there was not even a petition on the subject of its operation; and in the other case, a great part

\* The foundation of the old rule that there should be a period of at least forty days allowed for parliamentary elections, is in the Magna Carta of John. If it is useful or necessary on common occasions, it must have been peculiarly expedient upon so important an emergency as that of the coming of the Prince of Orange: but it was then dispensed with. The manner of calling the Convention was not determined till the 28th of December, after which the letters of election were to be prepared: all the returns, even from the most distant places, were made and received in London by the 22d of January following, that is, in twenty-four days; when the elected actually met, and proceeded on the important national business then to be adjusted.—(*Somerville's Pol. Trans. Gazettes of the time.*) Such was the precipitate foundation of the consent of the people, on which the celebrated Mr. Locke grounds the high title of William III.



of the nation was unalterably dissatisfied with the decision against the heir of James.

The regulation, therefore, under the Act of Henry VI. cannot, in any possible shape, be questioned. The emergency at the Revolution was doubtless an extreme case; and all that could be done, was, perhaps, nearly done; but if the proceedings adopted are, (as I by no means question) quite valid, how can a regular act of Parliament, that of the 8th of Henry VI. in a case not of higher constitutional importance, be doubted?

But it is said, that the interest of the country is disregarded,—the sense of the people not heard,—that calamitous, and even *unfortunate* wars are undertaken, and an immense load of debt accumulated \*. Sometimes, a hideous mass of undescribed grievances are spoken of, as if too notorious to require proof, and too numerous to be specified. All these matters of complaint are ascribed, by Sir Francis Burdett and his adherents, to a degenerate state of the House of Commons, and the want of a constitutional and true representation of the people in Parliament.

To many who have unthinkingly adopted, and habitually brooded over this popular delusion;

\* Proceedings of Westminster Meeting, February 9, 1810.



who, not exerting their judgment, do not discern truth, or detect fallacy, and who, pleased to hear of nothing but grievances, and to speak of nothing but ruin or reform; to those thus familiarized with discontent, and gratified with an increase of it, an appeal to the real state of facts would be nugatory; it is what they cannot endure, and will not listen to. If in the administration of the immense expenditure of this kingdom, one of the many persons who must be trusted is found a defaulter in his accounts; if in the course of war, an unpopular officer makes an unsuccessful expedition; if in the exercise of their duty, by the law officers of the Crown, a libeller or propagator of sedition, is upon due process, sentenced to a punishment calculated to check his unlawful designs, and prove a warning to others to abstain from similar offences; all such occurrences are mixed together as grievances, and referred to an imperfect representation of the people, as the cause from which they proceed. The sentence of a court of justice, as now constituted, is not easily impeached, yet is it sometimes held forth as tyrannical, because severe, or as excessive, perhaps for no other reason than that it is *felt* to operate as intended, and intended wisely, to prevent a repetition of the crime. It is loudly proclaimed that the press, the palladium of our liberties, is in danger; that we cannot exist without an enlarged liberty of the press; that no un-



popular military officers are to be employed, and that there should be no defalcations in any branch of the collection or expenditure of the revenue; all these, and many more abuses, are, it is roundly asserted, to be prevented by a different state of the Parliament: they are all to be completely remedied, by giving the people their alleged rights of equal representation; by recurring to the genuine and ancient purity of Parliament, from which it has degenerated.

But *such rights*, it has been shown, never were exercised, and never existed in British history. The genuine or ancient purity of Parliament is a phantom that eludes research; and the correction or prevention of all abuses, in the present state of society, is equally unattainable.

In the progress of this treatise, several instances have been given, out of many that might be produced, in every reign of the later ages, where elections and members have been evidently influenced; and, it is clear, that on the original appearance of deputies, both from counties and towns, they came only for the purpose of assessing taxes on the orders of men, of which they were, for that end, considered rather the instruments than the representatives. In early periods, when the middling and lower classes were emerging out of the dominion of their lords; a com-



pliance with the wishes of the Crown, when necessary to be promoted against the natural desire of the Commons, was doubtless effected more by the influence of fear than of favour. When we consider the strong pre-eminence with which the middling orders had long to contend, it will be obvious, that until later times, the appearance of influence, as now most generally practised, must have been nearly impossible; but there can be no doubt that its effect was produced in no slight degree, although from a different cause. When we hear that the seeds of degeneracy were sown at the period of the Revolution, it cannot be meant, that a system of alteration in the rules of elections in towns was introduced, or that any discovery or practice came then first into use, whereby the independence of members was affected; we hardly know of any abuse after the Revolution that may not too evidently be proved to have existed in some degree before. There are, indeed, occasions, when abuses are more apparent, or more exposed to general observation, than at other times; and it would, perhaps, be difficult to name a period in history, when more active zeal, or talents better suited, have been employed, in scrutinizing into every department of the state, than during the last twenty or thirty years. I mean not to speak of such investigations in disparagement, but, on the contrary, with approbation; they are absolutely necessary in so large



a scale of revenue as that of Great Britain ; but there has been no discovery in these researches equal to what appeared during the reign of Charles II. and of William III. ; neither do I conceive that any such do now exist. What would Sir F. Burdett say to the electors of Westminster, and to the people of Great Britain not electors, if a President of His Majesty's Privy Council were impeached by the Commons for receiving a bribe ?—What would he say of degeneracy, if even the Speaker were expelled for receiving a bribe ?—What would he say of the Monarch and the ministers, who should not only concur in putting an end to a session, while the House were engaged in proceedings for the impeachment of such high delinquents, but continue the one, in what is, and ought to be, truly a most honourable office, and the other in the important situation of a high judge of *equity*, the Mastership of the Rolls, for several years after \* ?

Such signal examples of corruption could hardly be expected at the commencement of the practice ; the noxious plant must have struck out many fibres during successive seasons ; and before it could show such rampant progress, the seedling must have been carefully transplanted into a soil

\* See the cases of the Duke of Leeds and Sir John Trevor, in 1695.



well adapted and prepared for its strengthening growth. In comparison with former times, I cannot see in what respect any great deterioration has accrued, or how persons who have read our histories, can say that the Parliament and Government of the present day are fallen into a state of degeneracy unknown to our ancestors.\*

But I shall, perhaps, be told, that I am mistaking Sir Francis Burdett's meaning. It may possibly be so, as his expression is interwoven with another topic; but of that I shall delay the consideration, while I add some farther observations on the heap of imputed corruptions and abuses, concerning which, I conceive, many persons are, in various ways, most grossly deceived.

I will not allude to those whom the late Mr. Burke well denominated, *incorrigible Jacobins*; their minds are probably made up as to the subject of *radical reform*, upon different grounds than I mean here to discuss: but I believe there are many persons, not partaking in the full expansion of their philanthropic principles of preparing for a general resumption of natural rights, in both civil and religious concerns; many persons attached, I doubt not, to our excellent Constitution, but who labour under a kind of



habitual delusion, a self-imposed disposition to believe every assertion they meet with in a pamphlet or a newspaper, that states a public abuse, or any untoward occurrences, as ascribable to the degeneracy of Parliament,—the loss of its genuine structure,—its original purity. On some of these points, I mean not now to touch; but confining myself to public grievances alone, I wish to ask every person disposed candidly and reasonably to consider the abstract facts, unconnected with whatever may be their causes; I wish seriously to ask any impartial person, after competent reflection on all circumstances; in what period of our history he can show, that the public truly suffered less grievance, than, with one exception, is now really experienced? This exception arises from our heavy taxes; these are, undoubtedly, of unexampled magnitude; but in all other respects, we have infinite advantages over every neighbouring country; and the present time, compared with any previous period in our history, will be found to be more favourable to rational liberty than any other.

Sir William Blackstone states, that after the passing of the Habeas Corpus Act, anno 1679, “the people had as large a portion of real liberty, as is consistent with a state of society.” But, as if meaning to avoid being contradicted by the oppressions which happened soon after that



period, he explains himself to mean a theoretical perfection of public law. Mr. Fox adopted the same opinion in his historical fragment; but it appears from the very judicious observations upon that work, lately published\*, that in as far as liberty may be ameliorated by the annual sitting of Parliament, a perfect independence in the Judges, and on several other considerations, our situation at the present day is materially improved. It is, I apprehend, incontrovertible, that the general administration of justice has never in any age or country, been more purely or more correctly displayed than now; and the advantage resulting from an annual assembly of the Parliament, is infallibly secured, by the system of reserve adopted in the grants of certain necessary taxes, and the Mutiny Act. The grievances we hear of in regard to judicial sentences, are, in reality, rather the ebullitions of vexation, felt by some apologists of sedition, and those who delight in the defamation of public men, than any well-founded jealousy of a reasonable liberty of the press.

By the custom of blindly depreciating the present age, every defalcation in a national account—every abuse in a public office—and even the exercise of acknowledged discretion in patronage,

\* By the Right Hon. G. Rose,



are all eagerly magnified into high national grievances, and being attributed to a degeneracy of Parliament, they are mixed into a mass of arguments for its reform. The salaries of the public servants, by which I mean officers of the Government and the Court, are also frequently complained of; yet if we refer to the state of these officers heretofore, it will be found that very many of the salaries were the same an hundred years ago, when money was of double its present value. If the checks upon those intrusted with the public expenditure are investigated, and the profits of necessary employments appreciated by a similar comparison, the difference will be still more in favour of the present time. There may be; and there probably always will be, inequalities in the distribution of public emoluments; but since the system has been perfected, which began after the Revolution, by which the funds for the civil list have been distinctly specified, and abstracted from the general revenue, while every other head of public expenditure has been minutely appropriated; there has succeeded a degree of order and economy in the national finances, not to be found in the preceding ages.

There is, indeed, one description of expenditure, namely, pensions and sinecures, in which exceptions to these remarks may, perhaps, be admitted; but what can be alleged on that head,



will not upon the whole prove much excess in the present time. The principal weight of these objections seems to arise, more from the excessive pitch to which taxation has been carried, than on a reference to ancient usage: 'our Princes have, indeed, always exercised a munificent liberality, not confined by the ungracious restraint of dry and measured reward; and the manner of our government seems ever to have cherished an establishment of independence for the Monarch, which discountenances the niggard 'accuracy less inclined to make any useful distinction between generosity and profusion, than to confound them. We may see that so early as the reign of Edward III. pensions were bestowed both for services performed, and to be performed\*; and, in so far as the personal liberality of the Prince is to be considered, it will unquestionably be found, that he never was, in any age, more restricted than now.

\* Godwin's *Life of Chancer*. It may here be suggested, that the Crown was then upon a different establishment. That is true—and the establishment was greatly more ample: but still the burdens on the subject in the e ages were occasionally little less in proportion than now; and as the total royal and national expenditure was, with exceptions not worth noticing, mixed together, retrenchment in any branch would operate a diminution in the taxes, which were in fact applied to general purposes, although, on some occasions, nominally raised for war services.



Towards diminishing the old patronage of the Crown much has certainly been done in our times \*, and a system has been commenced for reducing the highest paid and least effective offices, which will doubtless continue to be pursued. The publicity also which is now given to all appointments and pensions, tends to promote an economical and suitable distribution of them; and without denying the abstract truth of some ground of complaint, the present age may be safely vindicated from the imputation of increased profusion in proportion to the establishment.

The practice of inflaming popular discontent, by magnifying every occurrence of abuse into a constitutional grievance, is upon other grounds full of absurdity and mischievous fallacy. Can those who thus urge the people to riot and disaffection, affirm, that in any former age there have been no abuses, no malversation in office? Can they show when this golden age existed? Or by what admissible argument, it cannot be too often asked, have they shown, or can they show, that the Parliaments they propose would prevent the abuses of which they complain? How do they show that meaner men than those who now compose the House of Commons would

\* See a tract on the Influence of the Crown, by the Right Honourable George Rose.



be more capable or attentive to public duties, or less liable to corruption? Let the best period of representation be ascertained;—let Sir F. Burdett point it out;—let him show the epoch of perfection from which we have 'so grossly degenerated, and to which his new-modelled Parliament would restore us.

I shall now revert to that position in Sir F. Burdett's Speech in the House of Commons, where after stating the first appearance of the rotten borough system at the Revolution, he says, that the country was then deprived of a corrective intrusted to the Crown by the Constitution; and the people, ascribing the evils of other reigns to prerogative, acquiesced in its retrenchment, whereby a fatal mistake was committed, inasmuch as that power of the Crown is equally requisite with a full representation of the people.

In this passage, and from what follows (which it seems unnecessary to recite), it is clear, that the disuse of the royal negative is meant to be alluded to. Although I cannot assent to the idea of any real change in that respect having taken place, yet it seems to be a consideration of some importance not to lose sight of the state in which this branch of the prerogative has existed since the Revolution. Whether the milder operation of influence into which the practice of the negative



seems to have merged, be preferable to its abrupt and unqualified interposition after a measure has been canvassed and perfected, is a point upon which some diversity of opinion may possibly be entertained; yet, I trust, there are but few who will seriously contend, as Sir F. Burdett and others appear to do, that this constitutional power of the Crown is retrenched or diminished.

That there has always existed a degree of influence, either as now, or in the shape of fear, as in early times, seems undeniable; and it is clearly necessary that a spirit or principle of co-operation should be cultivated between the three branches of the Legislature.

If in an institution consisting of three bodies, equally participating in the supreme power, and, strictly speaking, each independent of the others, there did not exist, somehow, a principle of coincidence, and a disposition to agree, the whole would be a *caput mortuum*,—an institution of discordance. But as this is inconceivable, there must be, and always have been, some means of concession and understanding, so as to produce a connected effect from the joint operation of the three estates. The nature of such an institution tends to influence, or, what is tantamount to such degree of forbearance of opposition, as shall



conduce to agreement \*. In matters of finance, of peace or war, and some heads of general legislation, it seems wise to defer to the propositions of the executive government, without, however, sacrificing, on the part of individual members, any well-founded opinion of their own; but as individuals seldom happen to acquire information so full as the officers of the Crown generally obtain, and considering that these act under a responsibility, hence seems to arise a considerable portion of the support which Ministers, of whatever party, commonly receive †. The great negative power, invested in each of the three estates, it would seem, ought not to be exercised but in cases of emergency,—when all means of mutual concession and accommodation had failed,—and when, above all, a sense of danger, not provided against by the other branches, were conscientiously impressed upon that which should ultimately withhold its assent. This extremity,

\* M. de Montesquieu says, “ Ces trois puissances devroient former un repos, ou une inaction. Mais comme, par le mouvement nécessaire des choses, elles sont contraintes d’aller, elles seront forcées d’aller de concert.”—*Esprit des Loix*, tom. i. p. 329.

† No allusion is here meant to those, who from habits of friendship or connection, or motives of expectation, divide with a Minister; but it is conceived that almost every administration receives a degree of general support upon independent grounds, which, supposing *parties* nearly balanced, will contribute greatly to the Government majority.



it might be supposed, could seldom happen where the three estates are fully informed, and actuated by no motives but those of national expediency ; it does, however, occur, not infrequently, between the two Houses, and the rejecting power is then exercised, with a ready and unscrupulous freedom. An opinion, however, has been entertained, and if I am not totally mistaken, avowed in the Lower House, that the Crown should not, or ought not, to use its negative, when the two Houses have agreed ; it is understood to have been said that Ministers advising such a measure, should or would be impeached. The public is sometimes incorrectly acquainted with parliamentary transactions ; but if such sentiments should really prevail, Sir F. Burdett will, in one point of view, have the best of that part of his argument, and our once acknowledged Constitution is changed ;—one of the branches of the Legislature would be rendered passive, and dependent on the others.

It is a constitutional maxim, that neither of the three branches of the Legislature should be dependent on another, nor, generally speaking, subservient to its views\*. But if the doctrine

\* It is often asserted, that the House of Commons is dependent on the hereditary branch of the Legislature, and it has been averred with singular confidence, that almost one half of the English representatives are returned through the influence



now adverted to, be held by any considerable number of members of either House, it would form an important approach to a momentous change in the government. It is, perhaps, improper to lay much stress upon what may have dropped from one or a few members in the exercise of their unbounded freedom of speech ; but there would probably be found good constitutional objections to an impeachment of a Minister for the abstract deed of advising the negative, unless a clear portion of imputation of a different nature were mixed in the charge. I am well aware that the responsibility of Ministers ought not to be abated ; but it must also be admitted, that the two Houses compose not the whole Legislature ; and although there is, perhaps always, considerable difficulty in arguing some points of the English Constitution in extremes, it cannot be requisite or expedient

and positive command of Peers.—*Report and Petition of the Friends of the People*, which will be noticed hereafter. If this were well founded, and if the probable influence of persons intimately connected with the nobility were added, it would be impossible that the Commons could maintain any point against the Peers,—it would be impossible that any of the separate powers and privileges of the Lower House which are exclusive, and partly in discrepancy with those of the Peers, could be maintained. Yet how strenuously and minutely they are maintained, it must be unnecessary to describe. These extravagant assertions, by attempting to prove too much, disprove themselves.



to admit positions evidently unconstitutional into ordinary or received understanding; and it seems not inconsistent with prudence to guard against the covered approach of any erroneous conceptions upon essential and fundamental principles.

But when we reflect on the obvious and early end of the doctrine, that what is adopted by the two Houses, should not, or is not to be rejected by the Crown, it amounts to nothing less, than that the assent of the Crown is mere form, and if there were no power of withholding that form after previous determinations which were deemed conclusive, there seems little security that it would be long retained.

I have thought this point not unconnected with my subject, because there is reason to apprehend that the doctrine is adopted by the party who promote the popular cry for parliamentary reform; its importance becomes then peculiarly evident, and it cannot fail to be an object of the most serious anxiety, that unsound conceptions should be entertained on so material a part of the Constitution. What is to be considered of the views as to government, of men, who appearing to agree in the principle of universal suffrage, should petition for a thorough reform as a *radical*



*cure for influence*\*, and in the same breath, argue against the practical usage of the royal negative? Is not the end of such attempts calculated to make the two Houses alone the Legislature? I allude here particularly to the opinion of the late Mr. Fox. This gentleman's political connexions are not forgotten, nor that his opinions were warmly and extensively embraced, among people of various descriptions. What influence he had with his party, and how much they led the popular clamour, is fresh in recollection; and Mr. Wyvill, in his *justificatory* collection of papers,—in his repository for plans of reform, ready assorted, when what he calls the free spirit of our genuine Constitution, shall again reach a proper elevation†, has preserved evidence of the opinions of that great popular leader, upon this highly important point.

At the meeting of the electors of Westminster, to which I have just referred, certain resolutions, and a petition to Parliament for a more equal representation of the people, were introduced by Mr. Fox, Major Cartwright, and others, and they were, as usual, adopted. Upon this occasion Mr. Fox took an opportunity to vindicate

\* Proceedings at a general Meeting of the City of Westminster, July 1782.—*Wyvill's Pol. Papers*, vol. ii. p. 141, &c.

† Advertisement to vol. v. ut supra.



himself from the effects of some unfavourable notions that he conceived had been entertained respecting his political conduct. In the course of a speech for this purpose, he declared his unshaken agreement with the then Duke of Richmond in *general principles*, and *popular questions*; he said, that although an accidental difference of opinion upon a transient occurrence might happen, their sentiments were fixed on the main points. Now, the Duke of Richmond's principle of reform was decidedly universal suffrage. Mr. Fox then proceeds to advert on the conduct of the Earl of Shelburne, which he stigmatizes in very strong terms, and for the following among other reasons.

He says, "It was reported in the newspapers, and I have received a farther confirmation of it, through the medium of private friends, that the Earl of Shelburne, in his place in the House of Lords, promised to promote a parliamentary reform; at the same time, however, that he makes this profession, he intimated a design of restoring the obsolete and *dangerous practice of giving the royal negative to bills, which have received the consent of the two other parts of the Legislature.* What is this saying in effect?—Why, simply this: 'So long as the Parliament is what it is—so long as it is corrupt enough to follow my dictates, (provided the Noble Earl should



' find it so ; but from some indications of ho-  
 ' nesty which the present Parliament have  
 ' given, I deem that to be doubtful),—so long  
 ' as they echo my sentiments, that is, the sen-  
 ' timents of the Minister—so long I will by no  
 ' means advise His Majesty to exercise his ne-  
 ' gative. When the House of Commons ac-  
 ' quiesce implicitly in the wishes of the King,  
 ' His Majesty shall not interpose his prerogative  
 ' against them ; but as soon as they shall be made  
 ' an honest, independent House of Commons ;  
 ' when, by the reform that our late colleagues have  
 ' compelled us to adopt, the parliamentary repre-  
 ' sentation shall be rendered equal, general, and  
 ' virtuous, then it will be time for me to revive the  
 ' custom of His Majesty's negative ; then it will  
 ' be proper to check the opinions of such a Parlia-  
 ' ment, and to devise an expedient by which their  
 ' honest and constitutional powers shall be nuga-  
 ' tory and ineffectual. The time approaches when  
 ' the House of Commons will become, in fact, the  
 ' representation of the people, and when their lan-  
 ' guage will be the genuine voice of the people ; but  
 ' as such an event must necessarily prove of all  
 ' others, the most unfortunate and hostile to my ad-  
 ' ministration, I will hit upon a measure, by which  
 ' the inconvenient virtue of such a representation  
 ' may be made impotent and dangerless ; and by  
 ' which I may preserve my favourite maxim of ar-  
 ' bitrary prerogative, at the same time that I capole  
 ' the multitude by a specious concession to their



*wishes, and an empty compliance, which can neither benefit them, nor injure me.* Such are the gracious intentions of the present Minister."

These are the expressions put into the mouth of Lord Shelburne by Mr. Fox : and in considering them, it is impossible to misconceive that gentleman's opinion, and those of his political friends, upon the royal negative. Their sentiments not only concerning the *right and ancient existence of universal suffrage*, but on the *expediency of its restoration*, were besides clearly evinced in the previous labours of the Westminster Committee, of which Mr. Fox and Mr. Sheridan appeared among the chief leaders. The result of their arguments and intentions was, that there should be neither indirect influence, nor direct negative. But when this subject is maturely investigated, when we look fully and fairly at our Constitution, when we observe what the usage was,—what it is, and how we have fallen into it ; whatever opinions may be urged on the advantage or disadvantage of the change, we should still, I trust, come to the conclusion, that if influence were destroyed, the negative must be resumed. If in the progress of society, false and misplaced notions of courtesy have been introduced,—if the anodyne delicacy of modern practice is deemed unsuited to the great purposes of legislation, and must be discontinued, the al-



ternative is unquestionably a recurrence to the blunt but pithy customs of ruder ages.

From such reference as the author has been able to make, it appears that the first notion of this new power in the two Houses of Parliament arose soon after the Revolution. During very many, if not all the reigns, previous to that period, the negative of the Crown had been freely exercised, under the courtly terms, "*Le Roy s'avisera*;" for even in the early ages of our Constitution, the incivility of unqualified denial was not admitted in such high concerns. But there was another manner of avoiding an unbecoming collision in opinions on national topics, which seems, like influence, to have come into practice as general refinement advanced. Ministers could often so arrange the parliamentary business, as to have the more necessary measures sanctioned, before much progress was made in propositions which the Crown might be disposed to reject; and, in this way, frequently, bills were lost by a dissolution, or prorogation, as soon as the more immediate objects of Government were attained. This avoided the publicity of a formal parliamentary opinion from Administration, or the more pointed rejection of a bill from the Throne. Both these methods were practised by William III.; and several important regulations, immediately concerning Parliament, were contained in bills rejected, or



evaded in that manner \*. The House of Commons, however, being dissatisfied, upon the *second refusal* of a “ Bill touching the free and impartial Proceedings in Parliament,” obviously very necessary to maintain the purity and reputation of their body ; they resolved, that whoever advised the King not to give his assent to that act, was an enemy to Their Majesties and the kingdom, and drew up a remonstrance against the interposition of the prerogative in that case. It was grounded principally on a supposition, that His Majesty had followed the advice of persons not of the Privy Council, and prayed the King to hearken to the advice of Parliament, rather than that of particular persons, who might have private ends to be forwarded. The King returned a civil answer, but little to the purpose ; and upon this, a second remonstrance was proposed, but negatived by two hundred and twenty-nine against eighty-eight †. Surely, if we consider the rights of the different branches of the Legislature in a strict and general sense, it must be admitted, that each has its power of negative, as well as its power of sanction to all laws ; and although, in the same abstract view, each may be

\* Charles II. is said to have used a mean artifice in order to avoid negativing a Bill in favour of the Protestants. He is accused of having directed the clerk to withdraw it from among those that were passed, and about to be presented for the royal assent.

† Somerville's Pol. Trans. Kennett's Life of William III.



supposed internally competent to judge of the expediency of every law, yet in the practice of reciprocal concession, which must often take place, it might be conceived fit to have extended a deference in matters peculiarly affecting, as it were, the personal character of one of the branches. If, therefore, there were any occasion, in which the right of negative in one branch should be waved, it would seem to be that on which King William, in this instance, thought proper to exert it; and, on this account, the Commons might the more reasonably complain, as it prevented the adoption of measures which seemed naturally called for, to defend their House from dishonourable imputation. Such was the last occasion on which the negative was used.

That there are now more decayed towns which send members, is nearly all that can be shown of material difference in the representation between the present, and former periods; but looking to the practical consequence of this change, it seems uncertain, whether the conduct of the members representing the obnoxious places, or those of any other description, has been most instrumental, either in popular measures, or the public good. Mr. Wyvill, however, and Sir F. Burdett after his example, have stated that corruption and degeneracy grew rapidly after the Revolution, but the illustration adduced falls short of the purpose. Mr. Wyvill says, ‘But after



'that event, the struggle with corruption became  
 'more and more arduous from the rapidity of its  
 'growth; and yet, from the effect of the in-  
 'serable manœuvres alluded to \*, the strength of  
 'its antagonist was in a state of continual decline.  
 'By those means, the command of votes in a mul-  
 'titude of boroughs has been gradually crossed  
 'by one powerful patron. In many other instances  
 'an influence has been obtained by two or three  
 'families, by whose union the right of free elec-  
 'tion has been equally annihilated. In England, it  
 'is probable, that not less than fifty boroughs have  
 'been thus enslaved in the last age. Conse-  
 'quently, not less than one hundred members ap-  
 'pointed by the nomination of one or two indi-  
 'viduals have been added to that number, who,  
 'before the Revolution, held their seats by a si-  
 'milar appointment †.

\* Mr Wyvill, in describing the progress of the ambition  
 of obtaining seats in Parliament, had stated. 'Hence the  
 'new anxiety to obtain a command in elections, by the pur-  
 'chase of houses in the poorer boroughs, with their conti-  
 'guous lands and tithes: by accumulating navigation-shares, en-  
 'grossing coal mines, and other means of affecting the trade  
 'and convenience of inhabitants, and thus reducing them to a  
 'state of dependence. Even in one instance, the purchase of a  
 'spring of fresh water, materially convenient to the burglers of  
 'a large town, has been eagerly sought and completed, as no  
 'contemptible addition to power already great and predominant.  
 'With a similar design, an ascendant in corporations has been  
 'sought, &c.'

† Wyvill's *Secession Vindicated*, p. 33.



This was probably explanatory, and in illustration of the heavy charge of influence exhibited to the House of Commons by a society of gentlemen calling themselves the “*Friends of the People* ;” they tendered proofs which they were pretty certain would not be received. Mr. Wyvill goes a step farther. The publications of the reformers, which so boldly assert the degeneracy of the House of Commons as now elected, and thereupon vilify its character and proceedings, furnish (as far as I observe), but very few passages, containing any thing like proof of the imputed charge, and this is the only one that seems worthy of notice. . Admitting, however, for the sake of argument, that the above positions were true, yet they prove no degeneracy. They show, (if all that is stated, is admitted), that in an age after high and important power had been, by various events, confirmed to the House of Commons ; when riches were increased and diffused—when society was generally improved, and even the superior orders became more enlightened ; they show, that under such circumstances, in a nation where a participation in the Legislature was to be conferred by election, gentlemen of condition became ambitious of the distinction of being returned to Parliament ; that characters of rank and opulence considered the partiality, or favour of the corporation of a Parliament borough, as an honourable attainment for the



cadets, and collateral branches of their families. And when all this was accomplished, what was the woful change?—where was the national danger or disadvantage? The old practice was, to send, *bond fide*, burgesses, residents in the different towns, persons, whose property and credit together, could not, perhaps, extend beyond the contents of their shops; to these succeeded gentlemen of education, intelligence, and fortune—gentlemen who could buy many houses with the contiguous lands, and tithes—who could accumulate navigation-shares, and purchase coal-mines; and who could contribute to the trade and convenience of the inhabitants of a poor burgage tenure borough; or if there was a corporation, a powerful family solicited that some one of its relations, or connexions, should be admitted a burges, and thence have a voice or influence in the election of the members for Parliament:—this is the amount of the mighty grievance which Mr. Wyvill ostentatiously laments. He shows no other corruption; persons of fortune lay out their money in boroughs and their vicinity:—this is the unconstitutional, the dangerous practice! and hence the degenerate representatives. But it is alleged, that a command of the election is obtained—by whom? By persons who become owners of the houses and adjoining property of every description. But there is no longer any choice left for



an election, and whoever is proposed by these rich people is returned. What does this amount to? The burgage tenants, who, if their houses were ever their own, have sold them, are thereby deprived of their elective franchise:—this is their grievance. If in any age, the inhabitants, as full proprietors of their tenements, sent members to Parliament by that right, they have lost it, in like manner as a freeholder selling his land, sells his right to vote for a county member. Then as to corporate towns: the relation of a noble family is admitted one of their body; he is a person every way superior to them; he engages their respect; acquires their esteem; is able to confer or obtain favours, and, at last, commands their gratitude; presents himself, or a friend, as a candidate to represent the borough or city, and is returned.

This, I think, is as much as Mr. Wyvill contends for, in what seems to be intended, as an account of the progress of degeneracy and corruption since the Revolution.

In proceeding farther in the investigation of Mr. Wyvill's account of the changes in the representative system, I must be allowed to remark, that although it should be admitted that the purchase of houses in boroughs, and property contiguous to them, may have changed the course



of elections ; yet, it is observable, from the lists of members of Parliament that have been collected and preserved, that, previous to the Revolution, many persons were returned upon successive elections, in a similar manner as purchasers of properties in the same boroughs, and contiguous to them, have since, either been returned, or have nominated members. The date, therefore, of much of this grievance, will be at such time before the Revolution, as it may be supposed or discovered, that inhabitants of burgage tenure houses were themselves possessed of the property of them, and sold them ; there being good reason from the lists to conclude, that the changes Mr. Wyvill refers to, added nothing, in fact, to the dependence of the electors. When, therefore, in describing the alleged changes since the Revolution, Mr. Wyvill adverts to the state of towns at that period, and calculates about one hundred members nominated by individuals, it will, I apprehend, be more consistent with facts to say, that a portion of the additional hundred, ascribed to the subsequent age, ought to be taken as having lost their supposed freedom long before.

What, then, it may be asked, was done in these respects at the Revolution ? What opinions did the illustrious patriots who brought about that mighty change—that great national improvement, hold of the representation ? Did



they consider the popular influence in our political scale defective or insufficient? What change was promoted by William, styled of *glorious and immortal memory* \* ?

Mr. Wyvill, aware of the inference from the answer to such queries, namely, that the elective franchises, and the structure of the House of Commons, were left untouched, artfully eludes the result of reflections on a fact so unaccommodating to his objects. In an excellent specimen of evasive statement, he admits that there were parliamentary abuses; and, as it was obviously desirable to account for their being disregarded, as much of the grievance as possible is ascribed to a subsequent period; and, after detailing the means I have cited, by which the alleged degeneracy was occasioned, he proceeds thus to introduce an apologetic discourse on the subject:

“Of these petty manœuvres the survey has been sufficient. But despicable as they are, their success has not been inconsiderable †; in the

\* William was well informed of all complaints that could be urged, as appears by the tracts and histories of that period.—See many parts of a collection of four volumes of tracts, published in the times of Charles II. and William III. particularly a memorial from the Protestants to the Prince and Princess of Orange.

† The only reason I see that Mr. Wyvill has for using the expression “despicable and petty manœuvres,” is “the pur-



course of the last century it has produced a dangerous change in the constitution of the House of Commons.

“ We are aware, that at the Revolution, several of the boroughs were mean and insignificant places, utterly unfit to retain the trust of their parliamentary franchise, from their absolute incompetence to exercise it aright. Yet then, Parliament, though not so well composed as it had been *in the early age of the Constitution*, was still tolerably well connected with the body of the nation; and its conduct had been usually correspondent with the sense and interest of the community. The defects in the representation, undoubtedly, were then perceived by the more sagacious friends of liberty. But in the infant state of corruption, the practical mischiefs resulting from those abuses were not great, and no urgent necessity to correct them appeared to exist. It was wisely resolved, therefore, by the conductors of the Revolution, to close as fast as possible, the revolutionary scene. No speculative im-

chase of a spring of fresh water, materially convenient to the burghers of a large town.” The purchases described before, and which I have recapitulated, had nothing either petty or despicable in them. This *purchase of a spring* seems to be introduced, and termed a despicable manœuvre, in order to discredit other transactions which partake not of the character thus bestowed upon them:



provements were proposed ; practical redress of the grievances under which they had actually suffered, was alone insisted on, and obtained. Hence the singular felicity of a Revolution in favour of liberty, which, if not entirely bloodless, was yet affected with fewer stains of blood than perhaps any similar event. By it, what was practically wrong was rectified ; much immediate good was accomplished with little or no mixture of evil ; and a precedent was held forth to posterity, to be followed when a similar necessity should demand it \*."

It is thus that Mr. Wyvill smoothly accounts for the seeming inattention to parliamentary abuses at the Revolution, and ascribes a more considerable increase of it to the last age than can be admitted. Taking the period he means, to be from the year 1600 to 1700 †, I more than doubt that fifty boroughs have been, as he expresses it, enslaved. Of six Yorkshire boroughs which he instances, namely, Malton, Richmond, North-Allerton, Boroughbridge, Knaresborough and Ripon, it is to be remarked that Malton and North-Allerton had returned only once or twice in the reign of Edward I. and were not afterwards called upon to elect, until the year 1640 ; therefore they were probably settled at that time on nearly their present

\* Wyvill's Political Tracts *ut supra*.

† What is referred to, was written anno 1799.



footing. Of Ripon he speaks with uncertainty ; and the other three, and the two first named, are burgage tenure boroughs. Malton and Richmond were, together with seven other towns, enabled to send members by vote of the House of Commons, anno 1640 ; and to whatever abuses they and others may be subject, they are certainly not to be charged as introduced by any undue exercise of the royal prerogative, but the contrary, as has been already noticed \*. Yet all this is overlooked in order to heap up degeneracy on the present times, and increase the popular discontent. The example of moderation, and forbearance from speculative changes, so prudently adopted at the Revolution, is lost in the rage of modern innovation ; and a recollection of the heavier calamities of popular violence and dissolved government, which probably induced the patriots of that age to acquiesce in the more controulable evil of influence, is now totally disregarded, in order to urge claims of theories and rights unknown in the annals of our national existence.

The same idea of a great increase of degeneracy and corruption was adopted, as I have before observed, by an association of gentlemen in London †, and is now propagated with all the intemperance of disappointed zeal, by Sir F. Biddett and his

\* Page 235 ; and Carte, vol. iv. p. 311.

† The Friends of the People.



friends. This society was one of the most conspicuous of many that we have seen in the cause of reform. Amongst the various characters of which it was composed, there were several, who, it must be presumed, were well acquainted with the history of the Constitution; yet an overpowering zeal must have strongly obstructed their recollection and understanding when they adopted their Address to the People of Great Britain, and their Report on the State of the Representation, but above all, when they presented their most intemperate Petition to the House of Commons. Like Sir L. Burdett now, they said, in addressing the people *that the reforms they had in view were not innovations, that their intention was not to change, but to rectify, not to displace, but to restate the Constitution, on its true principles and original ground.* They urged likewise among their authorities in favour of parliamentary reform, the opinion of persons decidedly intending universal suffrage founded upon ideas of the restoration of a genuine House of Commons, and a renovation of the rights of the people. In speaking to the House of Commons, they disclaimed acting *from any spirit of general discontent*; yet were their complaints founded upon every part of the construction of the House, and every thing connected with it; they seemed indeed so far to have

\* Address to the People, resolved to be printed, April 1792.



surrendered their reason to dissatisfaction, that their observations resembled much more the hasty effects of ill-humour, than the well-considered remonstrance of persons, anxious upon practical grounds, for a reform of avoidable abuses.

This society seems to have acted upon the same fallacy and mis-statement, which it has been the error of all the popular advocates for reform to adopt. In one point of view, their object was in the outset, professedly moderate, that is, they declared, that when a temperate reform should be obtained, they would go no farther, their association would be at an end; the people would then possess a more perfect organ to express their sentiments, and a power to correct abuses. A temperate reform, is what many considerate well-wishers to the country would rejoice in, but no moderate change could reach the wide-spreading sweep of their complaints, perhaps nothing much short of a total alteration of the habits and prejudices of society could obviate the inconveniences they set forth; and thus by the force of inconsiderate zeal, they seem to have deceived themselves, and those who unthinkingly embraced their notions.

They introduce the substance of their Petition, in a few concise axioms, descriptive of the early Constitution; but cautiously avoiding any distinct statement of it, they pass on to something like



the direct institution of a representative body, for the purpose of correcting inconveniences that might arise in the exercise of the supreme power by the other two branches of our present Legislature. As if anxious to conceal the real origin of the House of Commons, they seemed to conceive an institution devised at once *by the people* for the immediate purpose of their general security and happiness, through persons representing them, and responsible to them : and the direct establishment of this authority, is as usual ascribed to the wisdom of our ancestors.

But lest I should mis-state their arguments, the following is the beginning of the Petition itself, viz. :

“ That by the form and spirit of the British Constitution, the King is vested with the sole executive power. That the House of Lords consists of Lords spiritual and temporal, deriving their titles and consequence either from the Crown, or from hereditary privileges. That these two powers, if they acted without control, would form either a despotic monarchy, or a dangerous oligarchy. That the wisdom of our ancestors hath contrived, that these authorities may be rendered not only harmless but beneficial, and be exercised for the security and happiness of the people. That this



security and happiness are to be looked for in the introduction of a third estate, distinct from, and a check upon the other two branches of the Legislature; created by, representing, and responsible to the people themselves. That so much depending upon the preservation of the third estate, in such its constitutional purity and strength, your petitioners are reasonably jealous of whatever may appear to vitiate the one, or to impair the other. That at the present day the House of Commons does not fully and fairly represent the people of England, which, consistently with what your petitioners conceive to be the principles of the Constitution, they consider as a grievance, and therefore, with all becoming respect, lay their complaints before your Honourable House. Then follows an apology for words which might be thought strong or offensive, but which probably did not, in the opinion of any person, divest them of either of these qualities: after which they proceed thus.

“ Your petitioners, in affirming that your Honourable House is not an adequate representation of the people of England, do but state a fact, which, if the word ‘representation’ be accepted in its fair and obvious sense, they are ready to prove, and which they think detrimental to their interests, and contrary to the spirit of the Constitution.”



After this foundation for their complaints, the Friends of the People, in their very extraordinary Petition, proceed to introduce their grievances more specifically, through the following most intemperate and insidious apostrophe on the feeling and supposed conduct of the House.

“ If your Honourable House shall be pleased to determine that the people of England ought not to be fully represented, your petitioners pray that such your determination may be known, to the end that the people may be apprized of their real situation; but if your Honourable House shall conceive that the people are already fully represented, then your petitioners beg leave to call your attention to the following facts.”

These facts, or heads of complaint, are,

“ That the number of representatives assigned to the different counties is grossly disproportioned to their comparative extent, population and trade. That the elective franchise is so partially and unequally distributed, and is in so many instances committed to bodies of men of such very limited numbers, that the majority of your Honourable House is elected by less than fifteen thousand electors, which, even if the male adults in the kingdom be estimated at so low a number as three millions, is not more than the two hundredth part of the people to be represented. That the right



of voting is regulated by no uniform or rational principle. That the exercise of the elective franchise is only renewed once in seven years."

After stating that these matters of complaint are distinctly set down, in order to show "that they are acting from no spirit of general discontent," they proceed to support, and enlarge their allegations by many general assertions, greatly exaggerated; these circumstances, however, when explained, and elucidated by their Report on the Representation and other proceedings, will probably impress an unbiassed reader with a very different opinion of the motives and intention of their production.

In entering on a discussion of complaints of grievances, *inconsistent with the principles of the Constitution, of changes insensibly produced by time*, which it is professed to *reinstate upon the true principles and original ground of the Constitution* \*, the allegations must be examined, and compared with the former state of things, in order to discover how far they differ. Looking then to the introductory part of the Petition, which has been given, it will be difficult to find the meaning of the first three paragraphs: but from the two

\* Address to the People of Great Britain.



succeeding sentences, it might be inferred, that our ancestors, by an effort of wisdom and ingenuity, had, as I have said before, contrived an institution, to render beneficial, what without it was dangerous and even despotic in the government; and that this expedient, *devised by the people*, was a *full representation of them*, and made responsible to them for their happiness, and security from oppression. For whatever purpose the statement here alluded to was made, it was very obscure; and if it was intended to describe the origin of the House of Commons, it is worse than defective, inasmuch as it lays a foundation for misrepresentation and misconception of that occurrence. It leads a reader, upon unauthorized premises, to suppose an institution *created at once by the people*, with power and authority from them to secure their interests and influence in the state: for the petitioners immediately proceed to assume in substance, that this institution was a *full and fair representation of the people* in *purity and strength* superior to what now exists. They then state, that in the exercise of their reasonable jealousy of any deterioration in an institution upon which so much depends, they find, that at the present day, the House of Commons does not fully and fairly represent the people according to the institution just referred to, and therefore the existing representation is inadequate.



Having endeavoured in the course of these Reflections, to notice all circumstances materially affecting our political condition, and the original structure of the representative branch of our Legislature; we shall by referring find that a monarchical government nearly despotic, or an oligarchy not only dangerous but tyrannical, ruled as it were by turns, the whole kingdom. We have found an assembly of deputies from the middling classes of society, *first called by the Kings, in fact, for financial arrangements alone*; and this assembly it appears, has from very humble beginnings, by *very various means and in the revolution of many years*, attained an immense power and ascendancy in the state, which has continued to prosper and to flourish. Although to the eye of modern accuracy, the history of the early ages of this assembly, is in many respects defective; yet the complaints of the Friends of the People, and of all who embrace their doctrine, can be fully compared with former practice, at the same time that the degree of deviation from the old rules contrived by the wisdom of our ancestors can be ascertained. In doing this, we shall also discover what good grounds appear for conceiving what is stated of the present representation; and if our *unenlightened and impolitic vocabulists* have assigned a meaning too confined to the word "representation," we shall probably be able to ascertain what the British constitutional meaning of the term is, and how far it was thought



expedient to extend or restrict the system for the combined benefit of all orders of society.

Thus when complaint is made of a disproportion in the representation of certain districts ; on looking back, we shall find that this supposed disproportion *has always existed*. If it is alleged that the elective franchise is not regulated by an uniform principle, and that it is unequally distributed, the complaint is of the same complexion, that is, of *what has always existed*. When it is averred that the present representation is *inadequate*, and the *proof* offered is, the sense of the word “ representation ;” it must be answered, that that substantive does not include in its meaning the abstract qualities of *adequacy, fulness, or fairness*.

The practice of all ages since the beginning of English representation, shows what degree of it has been considered sufficient in our Constitution. So much, and no more of popular influence has been admitted ; a certain proportion of monarchical authority has been sanctioned, and a given measure of aristocratic power is allowed ; from these three sources, the supreme authority is made up. It must not be said, on the part of the Crown, or by a distinct set of adherents to pure monarchy, if any such exist in Britain, that because we have a King, he is, therefore, to be invested with all the powers of the state : the same constitutional caution is to



be observed in regard to the aristocratic branch, and also in regulating the democratic portion of weight. There is no right in any of the three constituent parts of the Legislature to require more than its share of authority. They have each a constitutional right to defend their respective assignments of power from diminution or inefficacy, but they cannot claim an increase of it upon grounds of right.

. The result, then, of these facts is, that if the proportion of representatives from the different counties is altered; if the right of election is taken away from corporation and burgage tenures; if it is conferred indiscriminately on all persons paying taxes, these acts will most unquestionably be innovations; the system established by the boasted wisdom of our ancestors, will be laid aside; the rules hitherto governing English representation will be annihilated, and the election of the popular branch of the our Legislature, deposited in new hands. This is the strict and constitutional characteristic of such changes.

If it were true, and could be shown, that the Commons House of the Legislature had in some preceding age been chosen by all persons under the rank of Peers, occupying houses or paying taxes; and that by some undue means, this privilege had been taken from the mass of the people,



and put into the hands of freeholders only as to counties, and corporations and burgage tenants only as to towns; then, it might be asserted, that the right having existed, and been exercised, a claim of restitution would be well founded, independent, perhaps, of any grievance whatever. But under circumstances directly the reverse of what has been just supposed, a set of gentlemen, in a time of general irritation, harangued the nation, stating they were not to be taken as affected by the shallow courses of transient popular complaints; that they were the enlightened friends of the people; interposing to obtain for them their constitutional right, of which, time had insensibly deprived them; that they were unaffected by the general discontent of the day, but prayed that the Legislature might revert to its old source.—This is what these modern self-appointed *patrons* endeavoured to impress upon the people—their gratuitous and adopted clients.

But the real facts are very different: there existed great dissatisfaction in many respects, besides the “proportions of representation, and the distribution of the elective franchise.” What was called abuses on these heads, were clearly no more than what had been always the practice; and could not be formed into any serious constitutional complaint; but by blending them with what did not belong to them, the Friends of the



People dressed up a hydra-headed monster of corruption and incongruity. Unable to adduce appropriate evidence of their constitutional assumptions, they gathered together all manner of abuses and inconveniences, real and supposed, unavoidable or not; they were dissatisfied that Peers should have any concern whatever in elections\*; that there should be bribery in any shape; that there should be influence in any shape; and that there should be expense to any amount at elections. In these last respects, it would be difficult to believe, without the evidence of their Report and Petition, into what insignificant detail and peevish discontent they were led. These may be reckoned harsh terms, and the propriety of their application may at first be ques-

\* The standing resolution of the Commons, against the interference of Peers, in their elections, does not seem to have entirely the acquiescence of the Peerage. Individuals of this body do sometimes interfere, and seem to consider, that their hereditary dignity does not divest them of the rights generally attaching to the possession of land in freehold. According to the principles of the old Constitution, as described in King John's Magna Carta, this position could hardly be maintained; but in a different sense of representation, and if the knights of shires, chosen agreeably to the resolution of the House of Commons, should be considered a full representation of the landed property, it would follow, that the large proportion of it held by the Peerage is either not represented at all, or that its interests are to be considered as secured in the Upper House.

There was, I am informed, not many years ago, an instance of at least one Noble Peer voting at an election of a knight of the shire for Surry.



tioned, but when it is seen, that the committee could descend to complain of the expense of cockades—the difficulty of closely examining the alehouse bills of electors, travelling to and from the place of election—that they generally stayed there longer than one clear day—that *custom had sanctioned the propriety* of opening public-houses for the reception of voters from the country, whereby resident freemen were admitted, during the tumult, to participate with the non-resident—that polls were kept long open, and that a candidate might direct his friends to vote one by one as slowly as possible—that *voters should insist* on being paid for trouble and loss of time, and that all this should *necessarily be complied with by candidates* \*—that the opulent are tempted by civic

\* Report on the Representation by a Committee of the Friends of the People in 1793. There seems some difficulty in properly characterizing complaints to the Legislature against actions that are contrary to law, and subject to penalties for which any person may sue and recover with full costs. The necessary compliance, and the opening of public houses just mentioned as *sanctioned by custom*, are so well guarded against by the Act of 22 George II. c. 24. that when an additional law was proposed on these heads, it was rejected, because such transactions were already clearly subject to the penalties of bribery — *Blackstone's Commentaries*, vol. i. p. 179; Note by Mr. Christian.

The peculiarity of the complaint will be further conspicuous, when it is recollected how well some of the most active members of the society may be supposed to be acquainted with election concerns. There was, I believe, a striking instance



honours—that magisterial authority excites terror—that magistrates have a power of granting licenses—an influence in the distribution of public charities—in the appointment of parish-officers—the superintendence of poor-rates and assessments. They complained that influence may or does arise from these sources; but they are still trifles, it was alleged, when compared with the exorbitant power intrusted to the returning officer, which is next descanted on in a manner equally unreasonable.

If, however, these heads of complaint show not enough to induce us to say that they who adopted them were actuated by general discontent, there is another string of grievances in regard to influence; but whether they were more reasonable, or the selection of them discovered greater discrimination between unavoidable failings, incident to the nature of society, and abuses readily corrected without real or contingent evil in the remedy, the reader is left to judge.

After some introductory and apologetic matter, which might well seem necessary, their Committee

of this in the election for Southwark in 1796, when the gentleman who is said to have drawn up the Petition of the Friends of the People, being a candidate, withheld this necessary compliance, in which his opponent having indulged, he was seated for that borough by virtue of the laws against treating.



gave the following definition of influence, namely, "that degree of weight acquired in a particular county, city, or borough, which accustoms the electors, on all vacancies, to expect the recommendation of a candidate by the patron, and induces them, either from fear, from private interest, or from incapacity to oppose, because he is so recommended, to adopt him."

But seeming occasionally aware of the difficulty of distinguishing between what may be called honourable attachment, and other kinds of influence, they admitted a difference in one or two parts of their reasoning, confounding it, however, in the main, with the obnoxious matter; and although they said, they should be deeply concerned, to be suspected of a wish in any manner to decry the effect of friendly offices discharged with zeal and liberality, yet their "*sine and fastidious minds*" were filled with apprehension lest property should obtain a degree of weight *beyond what is natural to it*. They seem to have wished that it should be deprived of the means of procuring respect, lest it should also excite fear, or be, in fact, so powerful, as to overcome any opposition; and they desired to prevent property from having power and influence when it was *ill employed*.

By the present system of representation, they thought that, whether well or ill employed, opu-



lence had *equal* power; this they desired to *regulate*, and farther to make the effects of riches *dependent upon character* \*

Such arguments,\* I conceive, can only be the offspring of general discontent; and dissatisfaction of the most indiscriminate cast.

The futility of the attempt to cover this fretful humour by describing different sorts of influence, was evinced by the manner in which every second or third return of the same person for the same place, was classed under one head of baneful grievance, comprehending, without distinction, perhaps, downright bribery, with the consequences of what an affected moral delicacy could not distinguish from honourable attachment or commendable gratitude †.

\* This is almost literally taken from the Petition, and the Report on the Representation. But neither of these documents discloses any rule or standard for *determining the cost or ill employment of riches*; they do not state *where the avarice of connexions and neighbours ought to cease*, in order to avoid the political delinquency of extorting more than honourable attachment from the objects of generosity or benevolence. They did not say how long an opulent man might indulge the liberal-minded disposition with which Providence graces some of them, *before he incurred a risk of inducing the people of a county or town, to listen to his advice upon a vacancy in their representation*.

† In the long catalogue of examples of influence given in the Report, no allowance was made for any possible abuse in



These gentlemen brook not to have their motives examined, or their assertions questioned; but doubting the zeal of their adversaries for the welfare of the Constitution, they ask what security there is, that those who oppose their reform, are not something worse than passive? that in praising the Constitution, they may not mean

the electors; and if it was admitted, that a town had lately changed, or might change its members, at a future election, still it was assumed, that this was only a change of masters. An external compulsion was still supposed; or, at least, a recommendation, in a direction contrary to what would have been the effect of free choice, was presumed to be successful either through fear, private interest, or incapacity in the electors, to oppose. It was still supposed, that no choice existed; and it is the more necessary to notice these unauthorized assumptions, because it was artfully offered to prove all that was asserted in the Petition, for the reason, very probably, of being pretty well assured, that no proof would be allowed to be attempted, although, if it had been gone into, it must have fallen very short, in many cases, of what would have been requisite.

It may be said, that unbiased choice is always meant. The distinction, however, creates only embarrassment; all choice is determined, or biased, by a reason; and how is an elector to be hindered from a choice of reasons, if, as generally happens, more than one is offered? If there is only one candidate, a choice cannot well be exercised; but if, of two that appear, one relies on his pure patriotism alone, and the other, expatiating also on his patriotism, tells the electors, that if they vote for him, they will confer a high favour upon him, for which he will be bound in gratitude, and even in requital;—how are electors to be prevented from returning this last person, and may it not be through choice?



to destroy it? These are not slight imputations, although upon an inference rather forced. But it was said, there were solid grounds for entertaining them, upon what was called violations of the Constitution, with which Government was then reproached. This meant,\* no doubt, the suspension of the Habeas Corpus Act, and the other temporary precautions then adopted, but the first-mentioned measure was always resorted to in times of danger\*; and there were many who thought that the Constitution was then at the brink of the precipice of destruction.

This very heavy charge against those who opposed the proceedings of these *soi-disant* Friends of the People, throws a shade of suspicion over them; it is, therefore, prudent, and, perhaps, useful, to investigate their conduct; for experience teaches, that persons standing forward in the alluring garb of patriotism, are not, for that reason alone, to be implicitly believed, or blindly followed; their specious reasonings, and their references to ancient practices or rights, ought to be carefully examined. It was said, concerning those who support and admire the Constitution, “How are we assured, that, in praising the

\* See Statutes, 1 William and Mary, c. 2, 7, and 19. 7 and 8 William III. c. 11. 6 Anne, c. 15, 1 George I. stat. 2. c. 8 and 30. 9 George I. c. 1. 19 George II. c. 1. and 17 and 20 George II. c. 1.



Constitution, their intention is not to adorn a victim, which they wish to sacrifice, or to flatter the beauty they are endeavouring to corrupt? Let their intention be what it may, we answer their accusation in the words of one of the wisest of mankind: ‘ *That time is the greatest innovator; and if time of course alter things to the worse, and if wisdom and counsel shall not alter them to the better, what shall be the end \* ?* ’

This was so far well, and from no mean authority; but the sentence did not justice to the great man whose suggestion was pretended to be conveyed, and whose opinion was most egregiously mutilated by that brief citation. He adds much wise precept on the subject of changes in government, and immediately after the expressions just given, continues thus:

“ It is true, that what is settled by custom, though it be not good, yet at least it is fit. And those things which have long gone together, are, as it were, confederate within themselves: whereas new things piece not so well; but though they help by their utility, yet they trouble by their inconformity. Besides, they are like strangers, more admired, and less favoured. All this is true if time stood still; which contrariwise, moveth so round, that a froward retention of custom is as turbulent a thing, as an innovation; and they

\* Address to the People of Great Britain.



that reverence too much old times are but a scorn to the new. It were good therefore, that men in their innovations would follow the example of time itself, which indeed innovateth greatly, but quietly and by degrees scarce to be perceived; for otherwise what-soever is new is unlooked for; and ever it mends some, and pairs other: and he that is holpen takes it for a fortune, and thanks the time, and he that is hurt, for a wrong, and imputeth it to the author. It is good also not to try experiments in states, except the necessity be urgent, or the utility evident; and well to beware that it be the reformation that draweth on the change; and not the desire of change that pretendeth the reformation. And lastly, that the novelty, though it be not rejected, yet be held for a suspect; and, as the Scripture saith, *that we make a stand upon the ancient way, and then look about us, and discover what is the straight and right way, and so to walk in it.*"

Such are the comprehensive views, the prudent and instructive counsel of Lord Verulam \*, but the Friends of the People did not choose to impart so much.

It might almost be supposed that he had foreseen the events of the present age; he reminds

\* Essay on Innovations.



us, that time innovates slowly, that regulations may be requisite to meet the changes which it will insensibly occasion ; but they should be gentle and gradual ; he cautions us against inconsiderate experiments in government. In the time of this admirable philosopher and statesman, a reform of Parliament had not once been proposed, as far as I have observed ; but its members had been increased by the efforts of the Puritans, from the reign of Elizabeth to Charles I. ; and by the great additional weight thrown suddenly into the popular scale, operating with an admixture of religious frenzy, the balance of the Constitution was overturned. Still, although there were then republicans among the patriots, the constitutional and unalienable rights now contended for, seem not to have been discovered ; and as it was not supposed that their forefathers had enjoyed the elective franchise, unless they were freeholders of land, or inhabitants of towns, in similar situations very nearly as those who now elect in the various cities and boroughs ; no general extension of the right of election, or change in the proportion of the representation was claimed.

Great changes did, indeed, take place under Cromwell ; but they did not go to individual representation ; although the number of members for towns was much reduced, and the knights of shires were increased. It seems unnecessary to en-



large in the notice of that period, as it is very well known, that no part of the example was continued, the whole of the old system having been resumed \*. The good sense of the leading persons in the nation, and a paramount attachment to our mixed monarchy, under which, at that time, great progress in general improvement had been made,

\* Cromwell's Parliaments consisted generally of only one member for a town, unless it was large, and several for the counties, according to their extent. The members of his first Parliament were nominated by his Council, and personally summoned by himself, as appears by one of his writs (printed in Peck's *Desiderata Curiosa*), requiring Gervas Pigott, Esq. to appear and serve as one of the members for the county of Nottingham, in the Parliament summoned for the 4th of July 1653. See also Whitelock's *Memorials*, anno 1652-3.

From B. Willis we learn, that no representatives for towns except London, were summoned to the first Parliament; it consisted of one hundred and twenty-eight members for England and Wales, eleven for Scotland and Ireland, and five officers of the army, namely, Cromwell, Lambert, Harrison, Desborough, and Tomlinson, nominated by the House to sit as members.

Whitelock informs us, that the number of representatives fixed afterwards by the Instrument of the Government, was, for England, Wales, Jersey, Guernsey, and Berwick, not exceeding four hundred; for Scotland not exceeding thirty; and for Ireland thirty. Jersey and Guernsey were, however, left out of the list containing the local proportions. The qualification for county electors was changed, and raised to 200*l*. real or personal estate; the members for counties in England and Wales, amounted to two hundred and sixty-two. There were disabilities created against electing or being elected, from having assisted in the wars against the Parliament, and these were determined by the Protector's Council.



added to an exposure of the dangerous effects of dissembled patriotism, did not suffer an early opportunity to pass, without restoring the government to its wonted system.

Yet the excess of the late disorders left the governors and the governed in situations of precarious understanding and defective arrangement. Religious differences also, which it has ever been fatal to carry into extremes, contributed to retard the perfect recovery of the body politic from its late debilitating paroxysm. Thus circumstanced, a farther change became necessary, and was effected. But the popular branch of the system which had lately proved so dangerous in its agitations, was kept free from irritation, and it performed its part in a comparatively bloodless Revolution, with decency and firmness. It must not be forgotten, that, on that memorable occasion, a House of Commons *electcd upon the very same scale of proportional representation from counties, cities, and boroughs, and returned under the same distribution of the elective franchise, was neither backward nor deficient in the great constitutional services then performed.* The Friends of the People, the Friends of Reform, and all who speculate or argue upon a radical change in the frame of our representation, ought to remember, that in that golden age of the Constitution, while



the spirit of the Revolution was not only warm, but in its most fervent glow,—the united wisdom of the assembly, which then established the main beacons of the Constitution, declared, *that the Lords Spiritual and Temporal, and Commons, then assembled at Westminster* (as now, and at all times before), *did lawfully, fully, and freely, represent “all the estates of the people of this realm \*.”*

\* Stat. 1 William and Mary, sess. 2. c. 2. Preamble, commonly called the Bill of Rights. From this authority the Friends of the People seem vainly to appeal in defence of their Petition. They have said, “If the House of Commons are in truth that representative body, which the Constitution designs by *The Commons of Great Britain in Parliament assembled, the Petitioners have presented, and the Society have published the most daring libel that ever was penned*: why were they not prosecuted? If the Petitioners only spoke wholesome truths, and detected scandalous violations of the acknowledged privileges of the people, why were they not heard?”—*Address, &c. of April 9, 1794.* Will it, upon this, be contended, that the Parliament at the Revolution did not understand the constitutional representation so well as the gentlemen calling themselves the Friends of the People? They probably would insinuate this, because they seem to infer that their Petition was not a libel, inasmuch as they were not prosecuted. Whether that Petition was a libel, and, if so, what its peculiar qualities were, few persons will, I imagine, hesitate much to determine. In other respects, their complaint was heard and dismissed: it is very possible to be grossly libelled, although it may not be advisable to pursue the delinquents, and the expediency of prosecution may admit of many considerations not affected by the actual existence of the offence.



The doctrine which attempts to inculcate a *constitutional right*, to what, in a sense purely *republican*, may be held a *full representation*, is here contradicted by high authority. Here it appears incontrovertibly confirmed by the testimony of the best age of the Constitution, that the proportion of popular representation was considered sufficient for the equilibrium of our system \*.

There is still another part of this Petition, which seems too important to be left unnoticed.

It has been a pretty general practice with the partisans of popular reform, to hold out to the people, among the other blessings to flow from the projected changes, a diminution of the public expenses, a lessening of the taxes, and sometimes a reduction of the national debt. What the views of the Friends of the People were in these respects, does not precisely appear; but towards the conclusion of their Petition, they introduced the subject, and gave a statement of the progressive increase of the debt, with a corresponding notice “ of the number of statutes found necessary to preserve the freedom and independence

\* If the increase of influence since the Revolution will authorize a small portion of the complaints in the Petition, they are in every other respect in complete contradiction to the declaration I have cited.



of Parliament, to regulate elections, and to prevent frauds, bribery, &c." To which they added: "It is upon this evidence of the increase of taxes, establishments and influence, and the increase of laws found necessary to repel the increasing attacks upon the purity and freedom of elections, that your petitioners conceive it high time to inquire into the premises."

Lest I should misinterpret the meaning of the petitioners in thus blending the subject of the national debt with parliamentary reform, I will not hazard a conjecture upon their intentions; but Sir F. Burdett, who in effect seems to have taken their estimate of abuses for his scale of correction, thinks proper to explain himself on the subject by saying, that "he is not one of those who would apply a sponge to the national debt \*."

While we inquire, whether, in truth, the views of this society, and those who now follow them, are not innovations—whether their intention be to restore, not to change,—to reinstate, not to displace; we shall at the same time discover that the measures proposed to remedy their complaints, would not, in fact, have that effect, neither would they leave the Constitution on its "true principles," and "original grounds."

\* See Speech before referred to.



The Friends of the People proposed, at first, no specific remedy in their Petition, but the meaning of their numberless complaints is proved to have pointed to nothing short of a sweeping measure of destruction to all the laws and usages of Parliament, in effect the same as Sir F. Burdett has recently brought forward, grounded evidently on their publications. If this should be doubted, the fact will clearly appear from a comparison of their Declaration of 30th May 1795, signed "William Smith," with Sir Francis's propositions. These are but a little, if at all, more comprehensive, and somewhat more boldly explained.

It will not require much consideration to discover what change the system proposed by Sir F. Burdett would make in elections. He does not pretend to suggest any preventive against candidates spending their money, nor does he say *how* a change is to be operated in the known disposition of the people to take money,—to eat—drink—and be riotous: yet he asserts at once, that under his plan there would be "no bribery, perjury, drunkenness nor riot:"—"no leading attorneys galloping about the country, lying, cheating, and stirring up the worst passions amongst the worst people:—no ill-blood engendered between friends and relations—setting families at variance, and making each county a perpetual depository of election feuds and quarrels:—no demagogueing!"



We are not told *how* these evils are to be prevented, otherwise than by the mere consequence and effect of his plan, which he says is simple, and “*the true Constitution of England.*” The plan is also short, and in substance, that freeholders, householders, and others, subject to direct taxation to the poor, the church and the state, be the electors—That the kingdom be subdivided according to its taxed male population, and each subdivision elect one representative—That there be elections in every parish on the same day; and the parish-officers to be the returning officers to the sheriffs;—and that Parliaments be brought back to a constitutional duration\*.

Now the principal grievance in elections arises out of the great sums of money which candidates are too frequently disposed to expend upon them; and from an inspection of the laborious statement of the Friends of the People on the conducting of elections, it will appear that almost the whole of the expense goes to lawyers of different descriptions, travelling charges of agents, and voters, their maintenance and compensation for trouble, and loss of time. Let it then be supposed that in an election for a borough, to which the non-resident voters must be conveyed, and taken back to their abodes, money to the amount of four

\* Speech in Appendix.



thousand guineas for that particular purpose may be requisite. The sum might perhaps bring three hundred and sixty voters to the poll \*; but if it were expended in district elections, it would probably induce upwards of three thousand five hundred persons to vote; and when it is considered that there could be no farther expense of petition or scrutiny, an additional sum would probably not be withheld, as the contest would be decided by the numbers on the poll. What then would hinder gentlemen from spending, in the different parishes or districts, all the money they are now disposed to lay out in the way just mentioned †, or in burgage tenure purchases, or in pro-

\* According to the Report of the Committee, the average of the mere travelling expenses of the London voters belonging to Newcastle upon Tyne, Coventry, Bristol, and Colchester, amounted then to ten guineas each vote at the lowest computation; but there would be other contingent expenses, which will probably carry the real charge to above twelve guineas. The average number of voters for these four towns, resident in London, was three hundred and sixty-three, which at twelve guineas each, would amount to 4627*l.* for the London voters only.

† To this sum would be added the amount of all *other* expenses during the election, and after i in the case of petitions.

If polling by districts, on the same day, were adopted in county elections without any extension of the elective franchise, it *might* be a saving of expense to candidates in a contest, but it would be disadvantageous in places where there are many voters, by the more extensive display of election dissipation, and it might also tend to create a disposition in the inferior orders to purchase forty shilling freeholds, which I apprehend is a



party adjoining or connected with parliamentary towns? Would not all the excesses of contested elections now confined to those towns, be multiplied in every parish and in every village? Would not the worst passions and the worst people be excited in a tenfold degree to excess? Would not a new and more extensive scope for election feuds be laid open, by the addition of indigent voters prepared by example for corruption, and would not the funds which the very same measure would enable candidates to extend to that object, make every parish, instead of every county, the depository of election quarrels? Would not the complaints against returning officers, who would be all parish-officers, be increased a thousand fold? Would not all the bribery, drunkenness, and riot of a Westminster or Middlesex election be carried into the recluse and happy villages in every corner of the kingdom?

Such would be some of the prominent features of the change; and the undefined constitutional duration of Parliaments, whatever it might be, would make no difference in the aggregate sums

very undesirable thing. It would, besides, probably occasion great previous expense in treating, as is witnessed in borough contests. In cases of no opposition it would materially increase the expense, as similar proceedings to those now only pursued in the shire-towns must necessarily be held in every district.



of money spent in elections during seven or six years, the present general period of a seat.

As it seems generally admitted by the advocates of reform, that shortening the present duration of Parliament would not be advisable, *until* the construction of the House of Commons is altered to their schemes; and as, I conceive that under such alteration, annual or triennial elections would be still less expedient, I pass over that part of the subject with only one remark. This occurs on the frequent misrepresentation that is met with in the popular publications, stating the Septennial Act, as a mere temporary measure, that might be excusable when adopted, but now no longer necessary or fit to be continued, since the causes which gave rise to it, usually represented to be *alone* the pretensions of the House of Stuart \*, are

\* In the first Address of the Yorkshire Committee to the Electors of Great Britain, the Act is thus described: "It was *an irregular assumption of power*, which the alledged necessity of the times would hardly excuse; it was professed to be a temporary expedient to guard against the banished family; and it was *reluctantly submitted to on that single account*."

In a proceeding of the Westminster Committee, also recorded by Mr. Weyl among his Political Papers, it is said of the Act of 6 William and Mary, which allowed Parliament a continuance of three years, and that of 1 George I. which extended it to seven, "That the alterations in the Constitution of Parliament, were *made without communication with the constituent body of the people*, and have been continued without the sanction of their appro-



now, by the hand of Providence, removed. But the intrigues of the partisans of the excluded family, formed only a *part* of the reasons for the Septennial Act; the expense, disturbances and quarrels attending frequent elections had been sensibly felt, and compose the other part; these inconveniences form the grounds of the present complaints, and would undoubtedly not be removed by the proposed changes. The *whole* reasons for the Septennial Bill are distinctly narrated in its preamble, which after reciting the clause of the Act of the 6th William and Mary, c. 2. which established triennial Parliaments, proceeds, “And  
“whereas it has been found by experience, that the  
“said clause hath proved very grievous and bur-

*bation.*” Whether these positions are founded on *constitutional principles and facts*, every person may judge. The paper farther states that “*the voice of the PEOPLE*” appeared strongly against the bill “*in many respectable petitions.*”—But whence in truth did this voice come? It came from *Midhurst! From Westbury! From Marlborough, Abingdon, Cambridge, Newcastle, Staffordshire, Hastings, Canviff, and Petersfield*: the voice of the borough of *Hingham* was also offered, but rejected because it assumed that the Act *would overturn the Constitution, and infringe their liberties.* There were no more petitions, that I observe, against the Act; and for its repeal, there appeared, only two letters to one member, namely, from Warwick and Coventry to Mr. Bromley, representative for the former. (See Debates of the time.) The above paper contained other resolutions of a similar cast, and was signed “*R. B. Sheridan.*” and the late Mr. Fox signed a Resolution of thanks passed at the Westminster Committee, for that “*very intelligent Report*” respecting the duration of Parliament.



" thensome, by occasioning much greater and more  
 " continual expences in order to elections of mem-  
 " bers to serve in Parliament, and more violent and  
 " lasting heats and animosities among the subjects  
 " of this realm, than were ever known before the  
 " said clause was enacted ; and the said provision, if  
 " it should continue, may probably at this juncture,  
 " when a restless and Popish faction are designing  
 " and endeavouring to renew the rebellion within  
 " this kingdom, and an invasion from abroad, be  
 " destructive to the peace and security of the go-  
 " vernment ; Be it enacted \*," &c.

The validity of this Act is sometimes questioned ;  
 but Judge Blackstone, in concluding his chapter  
 on Parliament, mentions it as an instance of the  
 vast authority of that body : and his learned  
 Editor remarks upon the constitutional objections  
 taken against the measure, that it will not be de-  
 nied, that the Parliament was competent to repeal  
 the Triennial Act ; and by that simple operation,  
 the duration of Parliament might have reverted to  
 its former term, which depended entirely on the  
 King, and might much exceed seven years.

Let us now revert to the plan proposed at last by  
 the Friends of the People, which is nearly the same  
 as that which has just been considered. Its outline

\* Preamble to 1 George I. c. 38.



was to give votes to *all householders paying parish-taxes*, (except Peers). The arguments and reasoning upon it are open to many obvious objections, but I shall here confine my remarks to the principal part of it. They declared that, “admitting the general right of voting at elections to be common and personal, the exercise of it, on the principle we have stated, must be subject to a qualification; so moderate, however, that there may be no condition of life in which it may not be acquired, by labour, by industry, or by talents. If, in the end, it should furnish an election, as we believe it would do, for the whole united kingdom, by nearly a million and a half of heads of families, enough would be done to guard the rights of property on one side, and to satisfy the rational claims of personal representation on the other; and if a constituent power, so formed, so extended, and so limited, be not sufficient to create a free and independent House of Commons, the case is desperate; the object can never be obtained.

“Such is the medium by which we think that all the useful and effective purposes of a reform in the construction of the House of Commons would be sufficiently answered. More perfect schemes or accurate theories may be formed on paper; but the perfection of such schemes is generally found to fail in practice. They who hope to



succeed in practical measures of general operation, must yield to circumstances which they cannot command, must apply their principles no further than they will go with safety, and be satisfied with general effects.”—“ If,” continues the Declaration, “ no qualification be required of the elector, for what reason, and on what consistent principle should it be demanded in the candidate? If property be at all a sign of independence, or a pledge for conduct, there can be no distinction, except in the degree, between the trust reposed by the Constitution in him who chooses, and him who is chosen; they are both intrusted with a function and a duty, in the due performance of which the community have an interest, and a right to be secured. You cannot, without a contradiction, demand a qualification in one, without requiring it in the other. By not demanding it from either, that is, by leaving it open to the unqualified elector, to choose an unqualified candidate, it is true the inconsistency would be saved; but then the possible consequence might be, that a majority of the House of Commons might consist of persons as ignorant, as incapable, and as venal as the lowest and most profligate part of the community. Is it a question to be debated among men, whose judgment has been formed by reflection, or improved by education, or corrected by experience, whether such a House of Commons would be competent to make laws for the com-



munity, or be fit to be trusted with the power of taxation ?

“ It is undoubtedly desirable, for many reasons, that the collective body of qualified electors should be as numerous as possible ; \* but principally because a great number of electors is of itself a better security against corruption than the severest laws against bribery, by making one individual vote of no venal value and hardly worth solicitation. The security, on the other side, against violence and faction, † depends on the personal circumstances, character, and situation of the voters. To exclude the effect of influence and favour on human actions is impossible \* ; but it may reasonably be expected, that when the elector has something to give, and nothing to sell, his inclination and his judgment will go together, and determine him in favour of the worthiest candidate. A House of Commons chosen on these principles, by the combined operation of property and population, will be free and independent, if any thing can make it so. To keep it free, and independent of any influence or interest, but that of their constituents, the choice of new representatives must frequently revert to the people †.” They farther

\* This view of human actions is somewhat different from that originally entertained by the Society.

† Declaration 30th May 1795, referred to at p. 373.



explain, that the five hundred and thirteen members for England and Wales should be chosen, *each* by two thousand four hundred householders ; for, into divisions of that number, all the houses of the kingdom were to be distributed, and every such district to elect *one* member.

The Friends of the People assumed that there were upwards of two millions of persons to be represented, and they considered the right of representation as common and personal, yet subject to some qualification. They desired also that not less than 1,231,200 should be the number of electors ; and in so planning their scheme, it would become nearly impracticable to select the large body of persons thus to be intrusted with the power of election for the whole, without taking them by a rule that must necessarily comprehend a decided majority of the lower orders of society. No idea could be formed of obtaining an adequate number of electors among persons of the greatest fortune downwards, and leaving the class of non electors composed of the possessors of the smallest shares of property. A scheme of which the effect would be directly contrary, was devised, and many of the higher orders might be divested of the elective franchise, while *all* immediately above (and many perhaps partaking in) the dependence of poverty, were to enjoy it. The mass of householders paying taxes was supposed nearly



equal to the desired number of electors, and the expectation would doubtless not have been disappointed; for although there are not so many houses now charged, yet the list would have speedily increased, if in return for the small assessments that could be laid upon them, votes for members of Parliament were to be given. And wherever there were two candidates, (which would probably happen more frequently than now), every election would be carried by a majority of two thousand four hundred, that is, by one thousand two hundred and one. .

This plan, we must recollect, was to be adopted as the best security against bribery; it was recommended by persons of judgment improved by reflection, and corrected by experience, and that experience peculiarly well grounded in election concerns: let me however ask, whether it is from their experience, that these gentlemen say, one vote in twelve hundred and one is not worth soliciting—is of no venal value? Do they know by experience, that a vote in Westminster, London,

\* By the return under the Population Act of the 41st of the King, the number of male inhabitants in England and Wales was 4,245,113. After allowing for absolute paupers and persons under age, there might remain to be represented near what by the hypothesis of the Friends of the People was supposed. but ~~there~~ would probably not be found 1,231,200 houses paying to the state, the church, and the poor, as the total number of all descriptions was only 1,575,913.



or any county where there are five or ten times that number of voters, is found to be not worth soliciting? If, however, it should be true, that individuals of these large numbers are solicited, influenced, or bribed, how can it be argued, that they are less likely to be sought after in the smaller body of electors? What is the difference between the value of one in twelve hundred, and one in five or ten thousand? These very same gentlemen have deeply investigated, in their Report on the Representation, the practices in election contests, and they have shown, that votes are (in fact) purchased by various expenses, sometimes at the rate of twenty or thirty pounds each \*,—they have said, truly, that there are instances of immense sums being spent in elections, that is, the election of one person. Well,—there are men in this kingdom that will lay out large sums for the representation of a favourite county or city—there are some who aspire to recommend, or perhaps to procure the return of several or as many persons as they can to Parliament; while others, in the flights of this ambition, attach as much (pecuniary) value to a seat for the county of York, or for Westminster, as for four, five, or six seats for other places: but according to the new system, county and town representation are to be thrown together without distinction; and

\* Report on Representation.



such persons as are now disposed to expend thirty or forty thousand pounds for one seat for a county, would procure the return of eight or ten members from as many districts for a less sum.

But we shall be told, that under the present system, influence and corruption are practised more easily in corporations, and towns not incorporated, where the number of electors is much smaller than they would be under the new district scheme. This may, and may not be true in different instances; and what is the most general proceeding in corporations, and among the superior sort of borough householders? It is, I believe, the least objectionable kind of influence, what may be called an interchange of favours, with a balance on the side of the voter, to the benefit of his family, most probably by the advantage of a place of profit, which some one must have occupied. It is rare, I trust, that direct bribery is practised among that description of voters; but under the ~~new~~ scheme, the inferior class of householders would be the most numerous, and among them there would certainly arise an increase of corruption every way to be deprecated. What would be the "*labour, industry or talents*" necessary to rent a *house which would be charged to taxes*? Is it possible that men who know and have detailed ~~all~~ the subtle contrivances, all the deceit and cunning supported by incredible expense, which ~~disgrace~~



our popular elections ;—is it possible that men of *experience* and *reflection* in these matters, should insinuate that the property of such persons would be a *sign of independence*, and that they would have *inclination and judgment to determine them in favour of the worthiest candidate* ?

It will now, I trust, appear evident, from the perusal of these Reflections, that the cause of true and safe reform has been greatly injured by its too zealous advocates ; that the people have been deceived and alarmed by a supposed loss of rights ; and that a spirit of discontent has been excited against the Crown, the Parliament, and the superior orders, by reason of imputed encroachments, and deprivations, said to be injuriously committed, and unjustly persisted in by denial of redress. The public has besides been deceived by a boasted though delusive nostrum,—an incongruous and inapplicable *panacea*, most obviously unfit for its pretended purpose. The most reasonable objections to the present representation, originate in an unsuitable adherence to the old rules of election in counties and decayed towns, under circumstances materially changed : and the most prominent feature in the effect of this anomalous progress, upon antecedent although varied grounds, is an exclusion from the elective franchise, of too many of the class best qualified by their property and intelligence to be electors ; while on the other hand, too many of those who are poor



and necessarily both dependent and ignorant, are intrusted with a privilege unfit for them to exercise. The change proposed would neither repress the influence complained of, nor amend the objectionable part of our elective system: the scheme may be supported as placing our government completely under popular control, but not as calculated to improve it; for unless it can be shown that under the proposed system, the numerous poor voters to be introduced, *will not consent to be treated, coaxed and bribed*, and that candidates will be disposed to *spend less money in that way* than they have heretofore done through *all the channels of lawyers, travelling, petitioning, and purchasing burgage tenures and borough-houses, &c. &c.*; unless this can be shown, the good effect of the proposed alterations cannot be admitted, and, indeed, considering what is known and can readily be judged, they will surely be rejected.

It was observed by the late Sir George Saville, that it is good game for a popular leader to fix upon some abuse he is sure he cannot correct; or if there be danger of its being a practicable thing, he ought to press it at the time when, from parties and connexions, it is least likely to be effected; he may then have all the glory, and little risk, *nothing being so suitable to popular ambition as to fail in a popular cause* \*. It appears

\* Correspondence with Mr. Wyvill.



really as if this had been the object, upon many of the occasions when the subject has been brought forward. Should it seem necessary to vindicate this remark from suspicion either of irony or improbability, the conjecture would be strongly supported by referring to the immense load of *unfounded grievance, and unavoidable failing*, heaped together into a mass for the purpose of contending for a total change in the government. Convinced as all must be, who have carefully read our histories, that the Constitution has been formed from various shades of change and alteration; Englishmen ought perhaps not to be readily subject to alarm at distinct proposals of improvement upon known grounds. Very different however are the propositions put forth by the popular advocates for an extension of the elective suffrage under pretence of a Parliamentary Reform; and with a very great majority of the kingdom, the effect has duly corresponded; they have been alarmed for the Constitution, and have evinced a becoming disposition to oppose the mighty innovation.

The imputed usurpation of the rights of the people, by the nomination of members, and the influence which controls or commands elections, from the manner the charge is made, and the terms in which the people are instructed to demand restitution, might lead a person unacquainted



with, or overlooking the facts, to conceive that the rights had been somehow stolen or forcibly abridged. The facts, however, are shortly these. In early ages of society certain descriptions of people were empowered to elect some from among themselves as representatives, with duties very much circumscribed, but suited to the condition of their constituents; their functions and power being inconsiderable, the situation was so far from being worth soliciting, that the voters, or persons obliged to return, were under a necessity to solicit and pay the representatives. When the duties and powers of the elected became more important, the votes of constituents came to be differently considered; at length they were solicited as favours by persons of superior condition, and, ultimately, it is said they are obtained by bribery. The opulent part of the community, observing besides that some towns, although decayed, still enjoyed the privilege of returning members, have bought the properties of the inhabitants, leaving them as tenants, under implied conditions, that in returning members of Parliament, the wishes of the proprietor of their tenements should govern their votes. This is the amount of the charge, there is no violent or unjust taking; the voter who sold the tenement or property which conferred the vote, knew well what he was selling, and took a price accordingly.



If it is remarked that voters appear originally to have exercised a free choice in making their returns, it must be remembered that from the small portion of power attached to the office of representative, it was not in the nature of the thing that it should be otherwise; but in the earliest instances of control in elections, the object was effected through direct power, either over the electors, or the elected; and during the progress of the additions to the authority of the House of Commons, this direct power of the great men was diminished, while the general condition of the lower orders was improved, and the weight of their representatives increased.

If we examine where the blame in bribery attaches, and who is most censurable, the candidate or the elector; the commencement of the evil may be admitted to be with the candidate, *who asks the favour*; but *the accomplishment of the crime* involves both in guilt, and the voter who takes the bribe, is not the least censurable. It is not to be supposed that a candidate will bribe, if he can attain his end by favour or influence; but when these means are ineffectual, he offers money,—voters take it. Why do they not refuse it? In the answer to this plain question much of the nature of the evil will be seen. Here is the scene of “*scandalous violation of the privileges of the people,*” *the usurpation of the rights of*



*the people*, by the Peers and the rich men. How stands *the matter of unalienable right* at the time of *this bargain and sale*, by which a free election is obstructed? Has the candidate any means of constraining the voter to take his money? *Has the voter any means of refusing it if he were so inclined?* Finally, is this unconstitutional transaction liable to any penalty\*?

The answers to these questions are so easy, and the conclusions on them so obvious, that I may proceed to some farther remarks on the nature of the complaints or petitions against the bribery and corruption which thus arise. It is first to be observed that they proceed, almost entirely, from persons already entitled to vote. They complain of the inadequacy of the representation, and sometimes introduce the corruption. They purposely use very general terms, leaving the material parts to the management of committees; and it is in their proceedings, not truly in the complaints of the people, that the grievances and remedies are

\* Respecting the laws against bribery, it may be sufficient to call to recollection the evidence of Sir W. Blackstone, who said that there is nothing wanting to complete their efficacy, but resolution and integrity to put them in execution.

Bribery at elections involves both the *giver* and *taker* in a crime punishable at common law, or under the statute; in the former case by *fine and imprisonment*, &c. or in the latter by five hundred pounds penalty for each act of bribery. Case of Hindon, Lord Glenbervie's Reports.



to be found\*. It is unnecessary to enlarge on their various publications; as the Propositions of Sir F. Burdett may be taken for nearly the general result of the whole. The opinion of the Yorkshire reformers in 1798<sup>†</sup> was, that the elective franchise should be extended to copyholders, certain leaseholders, and householders paying tax<sup>e</sup> or assessments, and that the boroughs were a public nuisance<sup>†</sup>. In short, the scheme unfolded to Parliament in June 1800 may be taken, in its compendious form, to embrace the material points of all the petitions and resolutions of committees.

What the effect of that plan would be as to bribery, corruption, and expense, has been just shown; and it must require but a very short pause to discover, that the majority under this regulation would be largely on the side of the lower orders. With them would be deposited the sacred trust of election; and it remains to be considered, whether, from the *intelligence* and *independence* of that class, they are likely to prove the most faithful guardians?—Whether the change

\* See particularly the transactions of the Yorkshire Committee appointed when the economical Petition was agreed to, and the subsequent proceedings.

<sup>†</sup> Wyvill's Collection, &c. of Papers, vol. v. Preliminary Papers, XXI.



would increase or diminish the number of corruptible voters? And upon these questions I imagine, there can be no diversity of opinion.

It cannot be reasonably doubted that one of the best expedients for reducing both the expense and influence at elections, would be a compliance with the *spirit* of the old statute of qualification\*, whereby the number of freehold electors might be lessened, without taking from the qualities which so important a trust requires in them: for it is impossible to defend an extension of the elective privilege, to persons incompetent to judge of the fitness of candidates, accustomed to exercise the franchise to their own advantage only through bribery, and incapable of promoting that of the community, unless through the recommendation of others. The late Sir George Saville, in an Address to his Constituents, the freeholders of Yorkshire, told them, in reference to Parliamentary Reform in election and duration, that, “the tenant-right, or good-will of a lease for three years, is as saleable as that of a lease of seven. It will find its price both at the London and the country markets. It will be bought, it will be sold. The

\* In the reign of Charles II. (probably after the example in the Commonwealth), it was proposed to raise the qualification for voting to two hundred pounds property; and a bill to this effect was twice read in the House of Commons.



member will be as manageable, if the constituent be as venal. And they will not be afraid to meet at market as often as you please." He told them, "While the electors sell their voices to the member, and the member distresses his fortune to buy them, Parliament will be the purchase of the minister \*." With so much experience and obvious evidence before us, it is impossible to conceive how it should be once seriously proposed, so manifestly to increase the scope of political profligacy, and plan of improvement, as it were, in the cultivation of corruption.

Sir William Blackstone, in his chapter on the Parliament, says, that the right of electing representatives should not be exercised by the people in their aggregate or collective capacity when the population and territory of the state is extensive; and he illustrates the observation by the fate of Rome, after the burghers of Italy were admitted to vote in the public assemblies; it then became impossible to distinguish the spurious from the legitimate voter; tumult and disorder every where ensued, and the state became a prey to rival leaders of factions. The number of real voters added in that case was but small, they scarcely amounted to 70,000, which did not carry the whole to 470,000. But the popular leaders made



made up the rolls of the voters according to their pleasure; and an elegant historian of that republic says, the scene was unparalleled; "there was less government, and more to be governed, than has ever been exhibited in any other instance." This reference is not inapplicable: we are not without a large portion of party spirit; and an House of Commons, composed of members *in character and feeling purely popular*, would probably produce an example similar to that of the Roman people, who, under pretence of exerting their powers, were perpetually violating the laws made to restrain usurpation\*; and thus the public interest, and the order of the state, were in constant struggle with demagogues and profligate men.

Another principal head of complaint consists in what is called the inadequacy of the representation. This is not stated to arise from the number of members being too small; but, varying in shape, as all the popular arguments do, it is some-

\* Fergusson's Roman Republic. M. de Montesquieu indicates one of the dangers of democracy to arise from a spirit of what he calls *extreme equality*: "*Quand on prend l'esprit d'égalité extrême, et que chacun veut être égal à ceux qu'il choisit pour lui commander. Pour lors le peuple ne pouvant souffrir le pouvoir même qu'il conçoit, veut tout faire par lui-même, délibérer pour le sénat, exécuter pour les magistrats, et dépouiller tous les juges.*" (de leurs fonctions.)—*Esprit des Loix*, tom. I. livre viii. ch. 2.



times alleged in an insufficiency of individual suffrage ; and, on other occasions, because the members, as now chosen, have not a sufficient common interest with the nation, and do not sufficiently speak the voice of the people.

With respect to numerical, or individual representation, it is impossible to contend for it, unless upon a principle of change, not of reform. The exposition of our parliamentary history, that will have been observed in these pages, must show that it is entirely foreign to the constant system of the country ; and the expediency of a greater manifestation of the voice of the people, should be but little insisted on, unless it could be satisfactorily proved, that that voice can truly appreciate, and would be guided by, the interests of the country. But looking at the complaint generally, as affected by the remedy proposed, will it not necessarily follow from what has been said, that under a system which would create an additional number of electors, additionally exposed to influence and corruption, the voice of the people would not be more surely heard, supposing even that it were admitted to be desirable ?

The grievance of influence is generally made one of the greatest sources of dissatisfaction ; and it is most unreasonably used, unconscious as they may be of it, by the advisers and the leaders



of the populace. The principle of equal rights is ever ready to be urged; but the rights and interests of property are not so constantly had in remembrance. Let it be granted broadly, that there were an equal personal right to vote; does it follow in justice or policy, that persons of very small, and much larger properties, should have no different weight in the choice of a trustee for Parliament? Take them as *personally* equal; is it consistent with reason—with any maxim or expediency in society, that a householder under the proposed scheme, living by his daily labour, or a freeholder of forty shillings, under the present constitutional system, should have as much power as a man of a thousand times more property, in the choice of a *legislator* for both of them? Let it be supposed that the Utopian conceit of divesting property of influence, were unfortunately practicable, would it be just, that an hundred common householders, and forty-shilling freeholders and copyholders, should elect one of their own class against the contrary votes of ninety-nine men of a thousand times their property, which might be no more than from 1000*l.* to 2000*l.* a year?

The answers to such questions cannot be doubted \*. . . Inequality of property, we find,

\* This principle is recognised in the regulations of our East India Company, and the Bank, where additional property gives additional votes.



will always have its consequence in some shape. There may, indeed, be an argument against giving to great property a direct additional power of voting in parliamentary elections, because, as it would still be impossible to prevent its indirect influence, there would then be afforded double means for its weight; but where is the reason or justice of entertaining the notion of a national grievance in this respect?—Where is the patriotism, and what is likely to be the real object of men of the superior orders, who, by the most strenuous efforts, inculcate dissatisfaction, grievance, and usurpation of rights, from a cause which is not only beyond our reach, but which, if it were capable of any practical change, could not be altered without injustice?

The subject of reform cannot, perhaps, be well concluded, without advertiug, in some degree, to another topic, very much urged by its advocates. This is put in so many different ways, that it is difficult to be comprehended under one distinct head; and it would be unnecessarily tedious to discuss it much at large. What I allude to appears under a general designation of right; it is sometimes a *natural and unalienable right*, a *principle of equity and right reason*, on other occasions a *right of the Constitution*, and often a *right to the redress of grievances*.



On this general and large subject, no extensive investigation will be looked for in a treatise founded chiefly upon historical evidences, and their consequences. Besides, some remarks on it having been already submitted, it seems requisite merely to recall to the recollection of the reader, that under a Constitution, and continued system of representation, sanctioned as that of this kingdom has, been by the experience of so many hundred years ;—not only confirmed under various and signal convulsions and improvements in the State, but returned after the trial of a different course, and ultimately stamped by approbation at the Revolution :—in a system of which there is no example of any breach, except that which being quickly abandoned, becomes an additional argument in its favour ; and in a system where no usurpation of right is found, but what is incident to the changes in society, and corresponding with the general experience of their progress ; under such circumstances, no constitutional right to the proposed alteration can be established ; and with persons alive to the blessings enjoyed, under that system, it ought to be, and, happily, it is in vain, that misguided speculation, and partial discontent, address appeals under the specious but insidious attraction of rights.



Of all the shapes in which popular rights are urged, that which is conveyed under the pretence of right to a redress of grievances is the most frequently used; and it is cherished by the 'acknowledged right to petition'. Exercised with a becoming respect for the settled functions of the Legislature, this is an useful franchise, and a necessary check against unconstitutional preponderance in the monarchical scale of our government; but it ought ever to be remembered, that there is a paramount right and duty lodged in the supreme authority; that is, 'the Legislature, to judge of all grievances alleged, and their proper remedies. The supreme power of a society, guided and circumscribed by the dictates of reason, is intrusted with the regulation of the political concerns of those, who, by living in it, are necessarily considered as acquiescing in its establishment. In this state of things, no part of the people, short of a majority of the whole, can set up a right to change the Constitution, or even to redress an alleged wrong. If a majority of the population should declare its will, it would be the duty of an existing government to submit; but the desire of a small number, although in the shape of a right, if deemed inexpedient for the general good, Parliament is legitimately bound to resist; and all petitions upon grievances are constitutionally liable to rejection by this supreme authority,



exercising a reasonable discretion under the suggestions of prudence.

Abstract principles of equity and right reason, are referred to, as if they were equally applicable to a government long settled upon grounds, suited and interwoven with the habits and prejudices of the people, as certain plain-mechanical rules are to the making of watches. The proper qualities of pure metals, the art of compounding them, the properties of elasticity and effects of friction, are all so well ascertained, that a scientific artist can produce regular and nearly certain effects from materials thus known, and subjected to his skill. Not such, however, is the task of legislation,—the adjustment of a government. The varying passions and cunning of man will frequently baffle every effort for their restraint; these form the uncertain and deceitful irregularities against which the legislator has to provide means of counteraction and regulation in the intricate machine of government. What might be equity and right reason as to individual concerns, must bend to rules for the interest of the whole; and a law, which is to regulate, by one scale, the effects of an endless variety of motives, passions, and dispositions, must needs constrain some more than others. Seeing then, that partial grievances, some abuses, and very considerable imperfection, must always exist, it is an



questionably wise to avoid exposing the Constitution to new and unknown risks.

Hence the reasons I have hitherto urged are directed against excessive changes,—against a relinquishment of known and approved principles,—against changes resulting from false suggestions, not calculated for improving, but for altering the fundamental principles hitherto recognised by experience as good.—Upon these grounds, strong objections may be persisted in, which may not lie against the renovation of an obviously decayed part of a Constitution, upon the undeniable principle and shape of its original institution.

After what has been unfolded of the progress and settlement of our representation, it is impossible to contend, that the universal extension of the elective right of freeholders of land, to simple householders, holding nothing but houses in any way they can be held, is consistent with the principles or practice of former times. This may suit a theory framed in speculation, but is unknown to the British Constitution; it has never admitted but a part of its householders, and during the long period in which the Crown partook more than now of the supreme power, one of its acknowledged prerogatives was the conferring of that privilege; neither the irregular nor illegal discretion apparently exercised by the



sheriffs on some occasions, nor the power, which, it might be argued they possessed under the proclamation of James I. can show any indiscriminate right in householders to the elective franchise: and if the most correct analysis of the old principles were drawn, we should certainly find more reason to suppose, that the elective privilege given to householders was intended to be under the judgment of a select body, than in the uninformed or capricious choice of an ignorant and degraded populace.

The various occurrences I have carefully narrated from early accounts, which are open to the reflections of all who will duly consider them, lead, unequivocally I trust, to these conclusions. We have, however, examples more recent, and more applicable to the case. There is, in this nation, an innate readiness to listen to popular prejudices, which has kept alive, upon every occasion, a spirit of complaint, and a jealousy of the encroachments of power. Upon the change of the Stuart dynasty, there was, as I have elsewhere observed, an opportunity very favourable for a review of the representative system; yet the leading men of that period, highly extolled for their thorough knowledge of the principles of the Constitution, did not think any change requisite. We have been accustomed to view their proceedings as pure examples of enlightened patriotism; and



this habitual approbation, bestowed nearly alike, by persons of differing political sentiments, might, in a great degree, furnish an answer to our complaints, if no very material additional abuse has intermediately crept in ; but if it is right to satisfy our own reason upon present facts, the example of those times may perhaps be sufficiently respected, without obstructing a rational inquiry into the real state of the representation at the present day.

Keeping then such an example in view, many sober-minded, but not less valuable patriots, would probably join in a dispassionate appeal to the Legislature upon arguments resulting from a true application of facts,—upon grounds involving no visionary delusions,—attempting no vain struggles with the habits and settled prejudices of society,—upon grounds of rational expediency and intelligible extent ; men who have been enemies to the greater part of the schemes for reform hitherto brought forward, would, I am persuaded, become powerful advocates for anchoring remedies for some of the many complaints, which have been so widely diffused, although but little understood.

Taking an impartial view of the state of elections, and influence with the elected, under William III. and at the present day, I apprehend,



the absolute command obtained by individuals has increased but little; the general influence, however, through every means, has been undoubtedly augmented, and the same conclusion may, perhaps, be still more truly made with respect to influence on the elected. The application of influence is more effectually understood, as well as more successfully practised; and it must be generally admitted that changes have been effected by time, for which no corresponding new regulations have been provided. In this view may be considered those boroughs which are so much decayed, as to have no inhabitants but who are dependent tenants of one landlord, and can have no diversity of opinion, nor any choice, not even of the person called the patron. Some boroughs are known to be so inconsiderable, as to be undeniably of this description, and principles have been maintained, that would induce a direct and unqualified disfranchisement of such places; but if a measure of this harsh nature were considered too forcible or unjust, the scheme proposed by Mr. Pitt in 1785, seems calculated to obviate all the objections that could be raised. If in some cases, the only persons really concerned, as in the property and burgage-tenure boroughs to which I have alluded, should be parties to an agreement for disfranchisement, the balance of arguments would be greatly in favour of the manner of effecting a reform devised by that unri-



valled statesman. There were, indeed, scarcely any direct arguments against his propositions, and the small majority by which Mr. Pitt's motion was lost, 'shows that a reasonable and limited reform was not very generally thought inadvisable. When presented, therefore, in its proper shape, there may be still hopes entertained of its being adopted.'

The principal reasons that operated against Mr. Pitt's plan in 1785 were probably an alarm, which those who spoke against it strongly expressed, lest it should open a door to farther and unknown changes; the precedent seemed to be dreaded in that point of view, and also, as dangerous, lest a facility of meddling with corporate rights should be introduced. Notice was likewise taken of the few petitions presented in favour of the measure, and an inference drawn, that it was not desired by the people at large.

None of these arguments seem to be of sufficient weight to defeat the measure, if the answers of which they are susceptible were duly weighed against them. The apprehension of farther changes might, in a great degree, be guarded against by a solemn preamble, or declaratory clause, explaining the grounds upon which

\* The measure proposed by Mr. Pitt was approved by one hundred and ninety votes, which, according to the number then in the House, was within thirty-eight of a majority.



the Bill proceeded, and inhibiting any future change, unless upon reasons equally strong and undeniable. General corporate rights might also be fenced, by drawing a distinction between those conferring the elective suffrage, and all others.

The small number of petitioners in favour of reform, would appear but a weak argument against its being adopted, if the House were otherwise satisfied of its expediency, because it could not be contended that it is customary to wait for petitions for any particular enactment: and we see daily, that very few of the Acts passed, are so grounded. There is, indeed, in this part of the subject, an argument in the contrary direction; it being by many considered impolitic to be in a situation of granting, by reason of petitions, what might be done without that impulse. Petitions, when very numerous, lose their proper quality, and tend to command, rather than entreat compliance with their objects.

The proposition introduced by Mr. Pitt destroyed no pre-established principles, except the prescriptive right of decayed towns\*, which

\* If the old practice were deemed applicable to the present times; to discontinue the sending of writs to decayed places might be justified without any compensation; but the privilege, sanctioned by a prescription of two centuries and a half, which have elapsed since any such change has been made, will not,



the persons most interested should be willing to relinquish. What it amplified, was still on the old ground; it enlarged the privileges connected with the tenure of land, and extended at the same time a share of political consideration to householders.

There was, however, one part of the provisions of his scheme, of which the policy will admit of strong doubts; for as it is true, that the profligacy and corruption in our popular elections, arise chiefly, if not entirely, among the lower orders of electors, the expediency of any measure tending to increase their numbers, must, if in any degree adopted, be supported by some very strong countervailing arguments.

Mr. Fox differed very essentially from Mr. Pitt on the means of effecting his reform; he objected strongly to “ purchasing from a majority

according to modern principles of equity, be abolished by an unqualified act of power. Greenwich is the last place that discontinued after the 5th of Philip and Mary; but among the boroughs impriviledged since that occurrence, there appear several that are liable to objection.

The plan proposed by Mr. Brand in May 1810, appeared, in some respects, founded nearly on that of Mr. Pitt; but compulsory disqualification is objectionable; and an universal admission of borough householders, together with a low qualification for county voters, however the polls be taken, will not lessen the expense or corruption in contests.



of electors the *property* of the whole ;” and he maintained an opinion, “ that the right of governing was not property, but a trust ; and that whatever was given for constitutional purposes, should be resumed, when those purposes should no longer be carried into effect \*.” What is here called the right of governing, I cannot understand otherwise, than the right of electing members of Parliament ; and it seems that it must be concluded, this celebrated politician preferred a direct and unqualified disfranchisement, to the milder operation of the intended Act ; but if, as may be supposed, even that softer measure proved a cause of alarm, the principle maintained by Mr. Fox, who then divided with Mr. Pitt, must undoubtedly have increased the disinclination to its more forcible effects ; and this may have operated with some who voted against the Bill. Mr. Fox expressed also an opinion on this occasion, that the parliamentary delegation ought not to be confined to men of large fortunes, because “ vigilance, energy, and enterprise †,” are not to be expected from persons in that situation of life. Upon this an observation will occur, similar to that which has been made upon electors, namely, that less independence is likely to be found in men of small income, than in

\* The Reverend Mr. Wyvill’s Account of the Debate on Mr. Pitt’s Motion.

† Ibid.



those placed by fortune in more affluent circumstances. If influence in the House is now complained of, will that grievance be probably diminished by an addition of members, who, from their state in life, have too much to covet, and too little to enjoy? If Ministers should more easily render themselves masters of this "vigilance, energy, and *enterprise*," would not the misapplication of these talents be more hurtful than the "*vis inertiae*," which Mr. Fox seemed to conceive was produced by the gifts of fortune? It is immaterial to this remark whether persons of the description alluded to, embark with the opposition or the administration of the day. Those in opposition at one time, become members of administration at another period, and ministers are now always suspected, and subjected to imputation; but among the objects of the men thus recommended by Mr. Fox and others, that of self-advancement, by some means, perhaps by *any*, must be one; an increase, therefore, of their number, seems by no means a point of clear advantage. The notion, however, has been often suggested; and it is not improbable, that the desire also manifested by those who entertain it, of increasing the number of the lower classes of voters, with a view to save expense to candidates, is intended to facilitate the introduction of such persons as have been adverted to. Were it, however, admitted that they might



prove useful members of Parliament, it seems very doubtful whether the new measures would really contribute to their procuring seats; it might render attempts for the purpose more frequent; and in district elections under Sir F. Burdett's plan, there would be district candidates; popular and democratic topics would be largely urged; but although partial success might be gained, one of the chief complaints, namely, that of expense, would not be remedied; and in the elections now made by voters of nearly the number proposed, or under the greatest extension of the franchise, we do not find that unconnected men of small fortunes are successful.

This purpose, if desirable, would not be obstructed, and other advantages would accrue, by taking from the superior orders, whatever additional number of voters should be admitted to the elective suffrage. Every person who has looked at all to the conduct of elections, must have observed that the effect of the money expended in bringing the lowest classes to the polls is extremely prejudicial to the morals and habits of the whole lower orders, whether electors or non-electors. It may to some appear absurd to raise an argument on this head, but it will also probably be allowed by many, that, however irrecoverable the state of the people may be, that are already accustomed to election profligacy, it



cannot be desirable to add to the numbers so corrupted and debased. A class of people, either capable or likely to fall into full participation of those excesses which are disgraceful to the country, and to that part of its constitutional system, are fit for any thing, rather than to be trusted with the exercise of a privilege upon which so much depends. What is the advantage, let me ask, of investing persons with the power of electing, who neither will, nor can exercise it on the footing on which it is acknowledged it ought to be used,—on which it is given or intended to be given, and on which alone its exercise is beneficial? It is the not attending to this circumstance that creates the grievance, and every addition to that class of voters will increase it.

So much of the plan last proposed by Mr. Pitt, as contained a provision for admitting additional voters of this description, was, therefore, objectionable; the popular advocates of reform might, at the time, be pleased by the measure, but it could effect no practical remedy for the complaints which it is the true object to redress. According to the heads of the Bill, published by Mr. Wyvill, copyholders of forty shillings per annum, and certain leaseholders, were to be admitted in county elections. But the increase of voters approaching to independence, not to poverty, is the only source from which the voice.



of the people should be attempted to be obtained ; and the best channel for this purpose seems to be, in the order of yeomen. This class of men, being of late much increased in number and property, has undoubtedly added to the number of freeholders ; it seems, however, still to present means for reinforcing the elective body, by an addition which would favour popular objects, with less risk of inconvenience than would be found from the lower order of householders. Except the prescription founded on the old policy, which, under circumstances widely different, attached an exclusive privilege to freeholder, there seems no solid reason why copyholders, on fines certain, should not be admitted county voters. This extension, if restrained by a greater qualification, or annual rent, than forty shillings, would not interfere with the accustomed distinction, between freehold and copyhold tenures, which are of somewhat different value ; and it would, at the same time, add to the number of voters less susceptible of the disorderly and debasing influence prevalent in popular town-elections, and among the forty shilling freeholders.

When the effects of extending the elective franchise in the large and popular sense of right are examined, it will be difficult not to see an incalculable danger in it. I think it may be stated, that the popular agents complain in substance,



that a majority of the House does not speak the voice of the people, and in order to obtain an ascendancy to this voice, they would assign a great majority of the whole voters to the lower orders. Let us suppose that these electors were really free from all influence but what they conceive to be their own interest, and let us also suppose that they felt it uniformly their interest to maintain a majority in the House of their own order, and speaking *their sentiments*. Then, let me ask, in the language of the Friends of the People, “Whether such a House of Commons would be competent to make laws for the community, or be fit to be trusted with the power of taxation?”

This may be thought arguing upon an extreme case; but it is, in fact, no more extreme than is contended for, under the pretence of restoring the rights of the people.

The Rev. Mr. Wyvill has informed us \*, that since the time of Mr. Pitt’s proposition (in 1785), “the denial of redress, and a long-protracted discussion, have produced their usual effects: upon the subject of constitutional rights, the ideas of the public have been expanded, and a more extensive redress is sought in many parts

\* Political Papers, vol. ii. p. 612.



of England, and throughout Scotland, than Mr. Pitt's original plan proposed to have given. The discontent of the people under their constitutional grievances, is the result of their enlarged knowledge of their rights, and of the usurpations of Ministers and Peers; much has been well written, much has been eloquently spoken to demonstrate the injuries the Constitution has suffered; the fatal consequences which experience proves to flow from that source, and the necessity for some better security for the liberty of the people, have been insisted on with equal energy by the wisest ministers, and the most unblemished patriots. It is needless to inquire, therefore, whether the discontent of the people be owing more to the parliamentary speeches of a Pitt and a Saville, or to the political writings of a Burgh and a Price;—to the revolution in America; or to the more recent revolution in France. It is evident, that discontent exists, and that it will be our true wisdom to allay that discontent by timely accommodation."

This political syllogism was written in 1793. If its premises were true, and the conclusion just, it would involve a fearful prophecy, and infallibly command attention. But, fortunately, the whole may be denied, as founded in fallacy, and erroneously argued. Eloquence and good writing are too frequently employed to supply the place



of true reasoning, upon well-founded facts; and it is to be lamented, that superior talents are often made the means of inculcating wrong notions and false consequences. It is not the lot of the writer of these Reflections, to be able to oppose the beauties, or the powers of language, to the eloquence and address displayed on what is called the popular side of the question; and his humbler exertions have been confined in the less embellished course of facts. In other respects, it is far from his mind to impute direct sinister purposes to any of the present bodies of reformers that have been mentioned in these pages, or to those individuals whom the course of argument or reference may have introduced \*,

\* It would be highly improper to pass from this subject, without noticing, that some of the opinions which, conceiving them to be unwarrantable, the author has freely condemned, have been qualified, and partly withdrawn, upon the result of more mature consideration. It is, however, at the same time, to be observed with regret, that little of this commendable attention to the public is to be found, except upon indirect and incidental occasions. We know, indeed, and it is consolatory to know it, that a distinguished and a rising character in the State, who in the ardour of his early political career, embraced the doctrines, and, it was said, strenuously promoted the efforts of the Friends of the People, has since found reason to alter his opinions, and has had the true spirit to avow it in the high assembly where his rank now places him.—See *Proceedings of the House of Lords*, 13 June 1810. But there are of our quondam retortners, who, as far as the author has observed, have not discovered any change of sentiments; and when the subject



they, perhaps, consider themselves in their consciences right. But the blessings of that domestic monitor may be vitiated, for a season, by an overpowering passion of zeal; and such zeal, if suffered to usurp the place of reason, will exclude all suggestions of prudence and experience.

Impressed with a conviction that the people are not discontented,—notwithstanding the misrepresentations of their rights, and the exaggerations of their grievances,—satisfied that the parliamentary speeches of a Pitt were not calculated to mislead them into ideas of a restoration of lost rights of election, and rejoicing that neither the heterodox political tenets with which a Price abused his pulpit, nor the uncanonical labours of more ambiguous divines, have shaken the attachment of the people to the Constitution, the author addresses these Reflections not to the inferior classes of men, electors or non-electors, whose innate loyalty and consti-

of reform has been introduced, upon schemes evidently connected with the principles put forth by them, have not been equally solicitous to exhibit any new views of the subject, as they were to impress upon the public, those which are worthy only of reprobation. These principles are, in fact, kept alive under shades of change in the manner and form of their application; and Sir F. Burdett's propositions continue to be recommended for adoption, in schemes which seem still in preparation.—See *Mr. Roscoe's Letter to Mr. Brougham*.



tutional allegiance are firm: but he earnestly entreats the attention of those who associate to call forth the people as parties to mistaken views, and theoretic phantoms; he entreats them to consult the facts of our history, and the necessary consequences of society;—they will see, that in a rational, long-settled, and universally admired Constitution, the rights of the people are well ascertained, and necessarily comprehended; and contrasting these Reflections with the popular delusion of lost rights, the truth will be discovered. In referring to the history of the kingdom, they will see, that the liberty and well-being of the whole people, have never, under any system, been better secured than by the Constitution as it now stands. They will easily discriminate between the temperate views of a Pitt, and the wild dissatisfaction of a Burgh, or the apparent jacobinism of a Price. If they look into facts, they will see, that the discontent, and what is called enlarged knowledge, imparted to some of the people, proceed alone from the pernicious zeal of their teachers, whose doctrines are contrary to the uniform practice of the Constitution,—have been conceived in speculation fomented in dissatisfaction, and are now pregnant with danger;—doctrines with which accommodation or compromise is not wise nor prudent. Discontent, founded on misinformation, and increasing under additions to its delusions, it is true



wisdom to allay, by correcting the unfounded assumptions, not by yielding to its unauthorized claims. Far from seeing inducements to a change, from the examples of America or France, we shall find reason to be grateful for the advantages we enjoy;—to prize the good we know; and, following the wise advice of Lord Verulam, to beware lest we yield to a change which brings not amendment; and although the important consideration be not rejected, yet, *that we make a stand upon the ancient highway*, and looking around us, examine well how we have proceeded, where we are, and whither we would go, in order to discover what is a right course.







# APPENDIX

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## VIEW OF THE PROGRESS OF REPRESENTATION.

*Towns sending to Parliament constantly at the End of Edward the Third's Reign.*

Appelby	Hereham	•Romney
Arundel	Hilf	Rye
Barnstaple	Kingstington	Sandwich
Bath	Lythe	New Sarum
Bedford	Ipswich	Old Sarum
Berchinghamley	Launceston	Scarborough
Birmingham	Leicester	Shaftsbury
Bridgenorth	Loominster	Shoreham
Bridgewater	Leskeard	Shrewsbury
Bridport	Lestwithiel	Southampton
Bristol	Lewes	Southwark
Cambridge	Lincoln	Stafford
Canterbury	London	Sieyning
Carlisle	Ludgershall	Tavistock
Chichester	Lyme	Taunton
Colchester	Lynne	Totness
Dartmouth	Malden	Truro
Derby	Malmesbury	Wallingford
Devizes	Marlborough	Wareham
Dorchester	Midhurst	Warwick
Dover	Newcastle, <i>Staff.</i>	Wells
Downton	Newcastle, <i>Northd.</i>	Weymouth and
Dunwich	Northampton	Melcombe
Exeter	Norwich	Wilton
Gloucester	Nottingham	Winchester
Grimsby	Oxford	Winchester
Grinstead	Plympton	Worcester
Guilford	Portsmouth	Wycombe
Hastings	Reading	Yarmouth, <i>Norf.</i>
Helston	Reigate	York.
Hereford	Rochester	



*Progress of Representation—continued.*

Totals at the death of Edward III.			Counties	Members	Towns	Members	Total
Richard II.	Restored *.	Added.	37	74	92	186	260
Henry IV.	Calne	—	—	—	1	2	2
Henry V.	Bedwin	—	—	—	1	2	2
Henry VI.	Bramber	Gatton	—	—	—	—	—
	Chippenham	Hindon	—	—	—	—	—
	Plymouth	Heytsbury	—	—	—	—	—
	Poole	Westbury	—	—	12	24	24
	Coventry	Wotton Bassett	—	—	—	—	—
	Windsor	—	—	—	—	—	—
Edward IV.	Cricklade	Wenlock	—	—	—	—	—
	Stamford	Grantham	—	—	4	8	8
		Ludlow	—	—	—	—	—
Edward V.	Orford	Monmouth town & county	—	—	—	—	—
Richard III.		Chester, city and county	—	—	—	—	—
Henry VII.		Walc. 12 towns, & 12 counties	14	16	17	21	37
Henry VIII.		Buckingham	—	—	—	—	—
		Berwick	—	—	—	—	—
		(Calais), 2.	—	—	—	—	—

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Edward VI.	St. Alban's	Brackley	—	—	—	—	—
	Lancaster	Peterborough	—	—	—	—	—
	Preston	Thetford	—	—	—	—	—
	Wigan	Westminster	—	—	—	—	—
	Liverpool	Boston	—	—	22	44	44
	Petersfield	Maidstone†	—	—	—	—	—
	Litchfield	Newport, Cornwall	—	—	—	—	—
	Heydon	St. Michael's	—	—	—	—	—
	Thurske	Bossny	—	—	—	—	—
		Grampound	—	—	—	—	—
		W. Lowe	—	—	—	—	—
		Camelford	—	—	—	—	—
		Salisbury	—	—	—	—	—
Phil. & Mary †	Woodstock	Banbury †	—	—	—	—	—
	Droitwich	Higham Ferrers †	—	—	—	—	—
	Penryn	Abingdon †	—	—	—	—	—
	Rippon	St. Ives	—	—	14	25	25
		Aylesbury	—	—	—	—	—
		Castlerising	—	—	—	—	—
		Morpeth	—	—	—	—	—
		Aldbrough, Yorkshire	—	—	—	—	—
		Boroughbridge	—	—	—	—	—
		Raeborough	—	—	—	—	—
		Carried over	51	90	163	312	402

APPENDIX.

\* The towns in this column had made one or very few returns during the reigns of the three first Edwards.  
 † This town intermitted for several Parliaments.  
 ‡ Greenwich made one return to this Parliament in the 4th and 5th of the reign. This seems the latest date of any representation being discontinued. Barnham made a return in 33rd Henry VI.; and all the other places that have been presented, seem to have disused since the reign of Edward III.



*Progress of Representation—continued.*

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	<i>Restored.</i>	<i>Brought forward Added.</i>	Counties	Members	Towns	Members	Total
Elizabeth.			51	90	163	312	402
	Tregony	Beeralstone					
	Yarmouth	Corfe Castle					
	Newport } <i>Hants</i>	Cirencester					
	Beverley	Richmond					
	Retford	Queenborough					
	Andover	Newton, <i>Lancashire</i>					
		Clitheroe					
		Bishop's Castle					
		Minehead					
		Stockbridge					
		Newton, <i>Hants</i>	—	—	30	60	60
		Christchurch					
		Lymington					
		Aldborough, <i>Suffolk</i>					
		Eye					
		Haslemere					
		Sudbury					
		Tamworth					
		Callington					
		St. Mawes					
		St. Germans					
		Fowey					
		E. Lowe					
		Whitchurch					

James I.	Agmondsham	Cambridge } 2 Universities	—	—	2	4	27
	Wendover	Oxford	—	—	12	23	
	Marlow	Tiverton	—	—			
	Harwich	Tewkesbury					
	Berford	Bewdley					
	Hechester	Bury					
	Evesham						
	Pontefract						
Charles I.	Seaford						
	Cockermouth						
	Okehampton						
	Ashburton						
	Honiton		—	—	9	18	18
	Woolly						
	Milbourn Port						
	North Allerton						
Charles II.	Malton						
		Durham	—	2	2	4	6
		Newark					
			52	92	218	421	513
		Scotland *	33	30	—	15	45
		Ireland *	32	64	33	35	100
		University	—	—	—	1	
			117	186	251	472	658

\* There were, immediately before the Union with these kingdoms, 124 county and town members in the Scottish, and 300 in the Irish Parliament.



*Progress of Representation—continued.*

52 English and Welsh counties send 92 members	}		Total County Members	186
33 Scotch counties send . . . 30	}			
32 Irish counties send . . . 64				
2 English . . . . .	}		Universities send	5
1 Irish . . . . .				
216 English towns send . . . . .	}			417
66 Scotch towns . . . . .				15
33 Irish towns . . . . .				35
				<hr/> 658 <hr/>

It is perhaps impracticable to form a table of this description perfectly correct; what is here attempted, has been rendered so as nearly as could be, and is taken from the different authorities on the subject, that have been referred to in the course of the work.



As the unconstitutional doctrines and unfounded assumptions which appeared in the public papers as the Speech of Sir Francis Burdett in the House of Commons, on the 15th June 1809, did in a great measure give rise to this Treatise, and very frequent allusions have been made to it; there will be some convenience in referring to the extracts here to be given. They are taken from the publication of the Speech by the Committee of the Westminster Election, and contain the principal objectionable points.

After some prefatory matter, calculated to justify and recommend the intended propositions, which, after candid discussion, are wished to be taken on their own merits, the Honourable Baronet says,

“The course I have prescribed for myself is to state the evils arising out of the defective state of the representation, and then to point out the remedy, which is simple, and perfectly practicable, not only consistent with the habits and interests of the people, and in unison with the laws and Constitution of the country, but is (as I think I can show) *the Constitution it-self*:—Let others deal in whimsical speculations, in undefined mysterious notions of a Constitution, which eludes the grasp, and soars above the conception of ordinary minds; let them amuse themselves with intricate theories and fine-spun metaphysics, whilst I shall hold fast by that plain and substantial Constitution, adapted to the contemplation of common understandings. *to be found in the Statute Book, and recognised by the Common Law of the Land.*—If it can be shown that the principles on which I proceed are,



erroneous, unconstitutional, and inconsistent with the ancient, fundamental laws of England, I shall stand corrected, and willingly abandon my proposition; but if, on the contrary, I shall be able to demonstrate, that the present system is the creature of innovation, and a departure from the old, established, *unrepealed* laws of the country, and that a recurrence to the practice of these laws is an easy and adequate remedy for the evil; though I may not indulge a hope of the concurrence of this House, yet I may hope for the approbation of the public; and, at all events, I shall enjoy the satisfaction of knowing that I have performed an essential duty, both to the people and myself; in bringing forward the present inquiry."

Then, after much that it is not easy to recapitulate, the truly objectionable part of the representation is confounded, in popular declamation, with incorrect historical allusion; and it is stated, that "a charge" has been made by the abettors of corruption against those who wish for reform, as *innovators* and subverters of the Constitution of the country; whereas, the sole object of us reformers is, to *rescue the country from the effects of the innovation that has been introduced*. Those who speak so much of innovation seem to forget what the great Lord Bacon has said, that of all innovators, time is the greatest. Will you then, while all things are changing around you, determine to stand still? Will you still cling to a rotten-borough system, the creature of innovation, nursed by usurpation, and matured by corruption? for such shall I show it to be. Is it reasonable that sovereignty should be attached to particular spots and places, and to convert into *private property* that which the Constitution has declared to be a *public trust*



—to permit an usurped local sovereignty, independent of the King, independent of the people, and destructive to both?—The prerogative of the Crown, had it been maintained free from encroachments, would never have suffered this anomaly, this ill-shaped monster, this rotten-borough system, at once formidable and contemptible, to have undermined the Constitution. During the whole course of our history, from the time of William the Conqueror to that of William the Third, down to which the legitimate prerogative of the Crown was exercised by the King, no such absurdity was conceived as a rotten-borough Parliament.—That part of the prerogative to issue writs to such places as were judged from time to time, according to their importance, most fit to send proper and discreet persons to the Common Council of the nation, was a most wise and salutary provision in the code of the Constitution, and well calculated to prevent the occurrence of those evils of which so loudly and with so great reason we at this day complain.—Can we suppose that any King in the possession of his just prerogative, would have thought of addressing a writ, when he was exercising that great function of his prerogative, the assembling the Great Council of the Nation, to rotten boroughs? or that it would have been endured if he had? The King's writs run, "*Ad proceres et dominos, et communes regni.*" under which description no rotten borough could be included. Can it be imagined that St. Maw's, the posts of Gatton, or the stones of Midhurst, would have been required to send wise and discreet burgesses to assist with their advice in the Great Council of the Nation? James the First, on his accession to the throne, upon summoning the Parliament, wisely exercised this prerogative by issuing a proclamation, for-



bidding the sending writs to decayed boroughs\*; nor was it till the prerogatives of the Crown were encroached upon at the era of the Revolution, when the seeds of this rotten-borough system, which have since grown so luxuriantly, and have produced such poisonous effects, the baneful influence of which we now so sensibly feel, were with woeful prodigality first scattered over the land, that the country was deprived of that corrective wisely lodged in the hands of the Crown by the Constitution, for its preservation against the unavoidable innovations of time, whilst the people, artfully led to ascribe all the evils of the two former reigns to prerogative alone, willingly acquiesced in its retrenchment:—in which they made a fatal mistake, originating in the idea, that they extended their own liberties in proportion as they curtailed the prerogative of the Crown—an ingredient in the Constitution as essential to its existence, as is an uncorrupt, full, and fair representation of the people in this House.”

Proceeding farther in this strain, a reference, very contradictory to the purpose of the Speech, is made to an opinion of Sir E. Coke’s; we are there cautioned *against incurring the risk of a train of unforeseen inconveniences which never fail to attend a departure from the established principles of our laws*; and then Sir Francis goes on to recommend a total repeal of *all Parliamentary regulations that have been established and confirmed by statutes and prescription during a period of more than five centuries*.

He says, “Having taken the Laws and the Constitution

\* “Next, that all the sheriffs be charged that they do not direct any precept for electing and returning of any burgesses to or for any ancient borough within their counties, being so utterly ruined and decayed, that there are not sufficient *resyantes* to make such choice, and of whom lawful election may be made.”  
—Cobbett’s Parliamentary History, vol. i. p. 969.



for my guide, in preparing the measure I shall have to propose, I at the same time examined attentively all those plans for carrying the same principle into execution, which have at different times been proposed; and having avoided all those intricacies which I considered as so many impediments in the way, have reduced it to that plain and simple form, the express image of the Constitution itself.—My plan consists in a very few and very simple regulations; and as the disease we now labour under has been caused by the disunion of property and political right, which reason and the Constitution say should never be separated, the remedy I shall propose will consist in re-uniting them.

“ For this purpose I shall propose :—

That freeholders, houscholders, and others, subject to direct taxation in support of the poor, the Church, and the State, be required to elect members to serve in Parliament.

That each county be subdivided according to its taxed male population, and each subdivision required to elect one representative.

That the votes be taken in each parish by the parish-officers; and all the elections finished in one and the same day.

That the parish-officers make the returns to the sheriff's court to be held for that purpose at stated periods.

And, that Parliaments be brought back to a constitutional duration.

“ The simplicity of this plan appears from its being the true Constitution of England, which has already prepared all the means of carrying it into immediate effect ready to our hands; and I make no hesitation in delivering



it as my well-digested opinion, that under the operation of this reform, it would be attended with much less difficulty to return a whole Parliament, than to settle a dispute at a vestry about a parish pauper. By the adoption of this plan of reform, those disgraceful practices which now attend even county elections, would be put a stop to. No bribery, perjury, drunkenness, nor riot; no "wealthy brewer," as was humorously described, who, disappointed of a job, takes in consequence "the independent line, and bawls out against corruption:" no opportunity would remain for such mock patriotism:—no leading attorneys galloping about the country, lying, cheating, and stirring up the worst passions amongst the worst people:—no ill blood engendered between friends and relations—setting families at variance, and making each county a perpetual depository of election feuds and quarrels:—no demagoguing. —If I *am* a demagogue, I am as complete a *felo de se* as can well be imagined,—this puts an end to the occupation:—There would be an end to all odious and fanciful distinctions of persons and property—all would be simple and uniform; their weight and influence proportioned to their *intrinsic* value; no qualifications, nor disqualifications;—no invidious exclusions by reason of any office, from the highest to the lowest, either in the elector or the elected—no variable, fantastical, litigious rights of voting—no possibility of false votes—no treating—no carrying out voters—no charges of any kind—no expense, legal or illegal—no contested elections.—The people would have a choice without a contest, instead of a contest without a choice;—no sham remedies worse than the disease pretended to be cured—No Grenville Act. Here I speak feelingly; I have undergone this *remedy*.—It is the remedy of a toad under a harrow.



—“*Haud ignara malis miseris succurrere disco.*” That Act, which had been so highly extolled, was itself called a *Reform*; as all the Acts aggravating the mischief, which have been substituted for the Constitution, are called in this House.

“Under the operation of that Act I have suffered a greater pecuniary penalty than any which the law would have inflicted for any crime I could have committed. This *remedy* is a luxury a man must be very rich indeed to indulge himself in. I could not afford it a second time, and preferred abandoning my seat after having been returned, to undergoing another operation of the Grènvile Act. One great object I have in view is to relieve other gentlemen from the like benefits, by preventing the necessity of having recourse to *such remedies* in future—by getting rid of all disputes, and contested elections, this good consequence will result from the adoption of this plan: besides preventing endless litigation, ruinous expense, perjury, ill blood, and periodical uproar and confusion, this House will be saved one third of its time in election committees; and the Statute Book will be relieved from the shameful burden of one hundred and thirteen confused and intricate laws,—all pitiful substitutes for the Constitution.

“There may be some gentlemen who think we should not get a better assembly within this House by this or any other plan of reform.—Even supposing, but by no means admitting, such should unaccountably be the case, the positive evils we should get rid of are sufficient recommendations to its adoption. It must also give rise to other important results: those who complain of popular clamour, of persons allying themselves with the people against the sentiments and decisions of this



House, would cease to have any room for complaint. In the event of such a reform no such clamour could exist, no such alliance could be formed; for then the sense of the people would be truly and fairly collected within these walls.

“The benefits that would immediately follow the adoption of this reform are incalculable. Though I am not one of those who would apply a sponge to the debt of the nation, yet am I firmly persuaded, that a reformed House of Commons would introduce such a system of economy, both in the collection and expenditure of the public revenue, as would give instant ease to the subject, and finally, and that at no very distant period, by a due application of national resources to national objects, *and to them alone*, free the people from that enormous load of debt and consequent taxation, under which the nation is weighed down.”

The conclusion is as follows:—“I have stated fully and dispassionately, and I hope clearly and satisfactorily, to this House and the public, the remedy for all our grievances, which I have been so often called upon to produce. I have obeyed that call; in that at least I have given satisfaction.—The remedy I have proposed is simple, constitutional, practicable, and safe, calculated to give satisfaction to the people, to preserve the rights of the Crown, and to restore the balance of the Constitution. These have been the objects of my pursuit, to these have I always directed my attention—*higher I do not aspire, lower I cannot descend*. I conjure this House to consider the necessity of doing something to satisfy the rational expectations of the public, that we should not go back to our respective parts of the country in our present acknowledged contaminated condition, without



nolding out some reasonable hope to the country, for its peace and tranquillity, that a reform adequate to the removal of the enormous and multiplied abuses and corruption now known to exist, and which I contend can only be effected by a House of Commons fairly chosen by the people, will early in the next session be entertained with good faith, and taken into our most serious consideration.—I would have the timid, who stand so much in dread of innovation, bear in mind, that the simple remedy now proposed is but recurrence to those laws and that Constitution, the departure from which has been the sole cause of that accumulation of evils which we now endure—that in many cases timidity is no less fatal than reluctance—and that the omission to do what ‘is necessary, seals a commission to a blank of danger.’—I shall now conclude with moving. &c.”

THE END.







## ERRATA.

- Page 52, l. 9, *read* favour.  
 66, l. 15, *after* and *read* the occurrence.  
 ibid. Note †, l. 5, *after* Henry II. *read* " and afterwards *dele* " *after* authority.  
 68, l. 14, *for* inadequate *read* inferior.  
 79, l. 12, *for* it *read* the law.  
 83, note †, *after* Henry III. *read* 1216.  
 91, l. 6, *after* grounds *read* as has been seen.  
 92, l. 10, *for* can *read* could.  
 93, *dele* the last note.  
 134, l. 16, *after* ~~the~~ *read* of title.  
 ibid. l. 18, *for* title *read* right.  
 161, l. 8, *for* it is found *read* we see it.  
 171, l. 7, *before* ~~any~~ *read* more.  
 214, l. 1, *for* be to *read* to be.  
 230, note, l. 4, *for* Commons *read* Commons'.  
 243, l. 1, *for* which *read* who.  
 251, l. 2, *read* Commons'.  
 256, note, l. penult. *for* propose *read* appoint.  
 295, l. 13, *read* did not abstain.  
 351, l. 3, *for* Richmond *read* North Allerton.  
 352, l. 4, *for* several *read* many.  
 363, note, l. 8, *for* hardly be maintained *read* could not apply.  
 ibid. l. 14, *after* House. *read* Yet according to the present practice, which is said to be no older than the reign of Henry VIII. the Lords are, in form, denied the power of altering a money bill, while a full and fair representation is contended for.  
 365, note, l. penult. *for* he *read* the former.  
 368, note, l. ult. *read* may.  
 388, l. 26, *for* all *read* those.  
 390, l. 2, *read* the number of voters they propose.  
 392, l. 26, *after* although *read* now.  
 400, l. 11, *after* plan *dele* of.  
 402, l. 15, *for* that voice *read* the people.  
 423, l. 9, *dele* —.  
 425, l. 10, *after* yet *read*, that it be held for a suspect—  
 ibid. l. 11, *for* highway *read* way.  
 APPENDIX, p. 429, note †, l. ante-penult. *after* to *dele* this.

The quotations have been, *by accident*, not uniformly marked.











